

**Part 1**  
**NO-FAULT MOTOR VEHICLE INSURANCE**

---

**HEARINGS**  
BEFORE THE  
**SUBCOMMITTEE ON COMMERCE AND FINANCE**  
OF THE  
**COMMITTEE ON**  
**INTERSTATE AND FOREIGN COMMERCE**  
**HOUSE OF REPRESENTATIVES**  
NINETY-SECOND CONGRESS

FIRST SESSION

ON

**H. Con. Res. 241**

EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO  
MOTOR VEHICLE INSURANCE AND AN ACCIDENT  
COMPENSATION SYSTEM

**H.R. 4994, H.R. 6528, H.R. 4995, H.R. 7514**  
**H.R. 3968 (and identical bills),**  
**and H.R. 3970 (and identical bills)**

**BILLS RELATING TO NO-FAULT MOTOR VEHICLE INSURANCE**

---

APRIL 20, 21, 22, 26, 27, 28, 29, AND 30, 1971

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**Serial No. 92-25**

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Printed for the use of the  
Committee on Interstate and Foreign Commerce



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## ORGANIZATIONS REPRESENTED AT HEARINGS

Aetna Insurance Co., Frederick D. Watkins, president.

American Bar Association:

Davidson, Louis G., past chairman, section of insurance.

Deacy, Thomas E., Jr., American College of Trial Lawyers.

Kuhn, Edward W., past president.

Reardon, Judge John T., circuit court, Quincy, Ill.

American Federation of Labor-Congress of Industrial Organizations:

Biemiller, Andrew J., director, department of legislation.

Clayman, M. Jacob, administrative director, industrial union department.

American Insurance Association:

Comey, Dale R., chairman, actuarial committee.

Jones, T. Lawrence, president.

Reid, John N., associate general counsel.

American Mutual Insurance Alliance, André Maisonpierre, vice president.

American Trial Lawyers Association, Richard M. Markus, president.

American Trucking Associations, Inc., Peter T. Beardsley, vice president and general counsel.

Avis Rent-A-Car System, Inc.:

Max, Frank J., Jr., vice president.

Morrow, Winston V., Jr., chairman of the board and president.

Murphy, John J., vice president and director of insurance and safety.

Car and Truck Renting and Leasing Association (CATRALA), Frank J. Max, Jr., president.

Consumers Union of the United States:

Klein, Robert, economics editor.

Warne, Dr. Colston E., president.

Hertz Corp.:

Edidin, S. M., vice president and general counsel.

Smalley, Robert A., president.

Housing and Urban Development Department, George K. Bernstein, Administrator, Federal Insurance Administration.

National Association of Independent Insurers:

Lemmon, Vestal, president.

Mertz, Arthur C., vice president and general counsel.

National Association of Insurance Commissioners:

Hanson, John, executive secretary.

Worthington, Lorne R., president.

National Association of Mutual Insurance Agents, Robert V. McGowan, president.

National Council of Senior Citizens:

Danstedt, Rudolph, assistant to president.

Hutton, William R., executive director.

Nationwide Insurance Co.:

Chilcott, Richard G., vice president.

Griffith, Robert W., vice president and casualty actuary.

Ryder System, John Davis, executive vice president.

Texas Trial Lawyers Association, W. James Kronzer, Jr.

Transportation Department:

Baker, Charles D., Assistant Secretary for Policy and International Affairs.

Volpe, Hon. John A., Secretary.

Walsh, Richard F., Deputy Director, Policy and Plans Development.

United Automobile, Aerospace and Agricultural Implement Workers of America—  
UAW (International Union), Leonard Woodcock, president.



# NO-FAULT MOTOR VEHICLE INSURANCE

TUESDAY, APRIL 20, 1971

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

About 3 years ago, legislation of which I was the principal House sponsor was enacted as Public Law 90-313. This legislation provided for a 2-year study of our American motor vehicle accident compensation system. This study has now been completed by the Department of Transportation. It produced 23 special reports on various subjects and a final report which was made public by the Secretary of Transportation on March 18 of this year. This was an excellent study. The Secretary of Transportation, the staff who actually conducted the study, and the members of the various advisory committees who assisted in the study are deserving of our thanks and commendation.

The study has established once and for all that our motor vehicle accident compensation system should be based on universal, compulsory first-party insurance for all motor vehicle owners—in short, no-fault motor vehicle insurance.

Two questions then remain to which these hearings and legislation resulting from them will be directed: Should the Federal Government assume the initiative in requiring no-fault motor vehicle insurance or should this be left to the several States? Second, what should be the timeframe for the transition to a no-fault system?

Quite frankly, it has been my impression since Public Law 90-313 was enacted that the first of these questions had been resolved therein. The first clause of the preamble to that law states:

Whereas, suffering and loss of life resulting from motor vehicle accidents and the consequent social and economic dislocations are critical national problems.

As I see it, national problems demand national solutions.

Nonetheless, as we begin these hearings, we have before the subcommittee, House Concurrent Resolution 241 which was introduced at the request of the administration. In essence, this resolution would express the sense of Congress that the Secretary of Transportation should seek for the adoption of no-fault motor vehicle insurance by the several States on a State-by-State basis.

There are also several bills providing a Federal solution to the problem. I am the principal sponsor of one of these, H.R. 4994. My cosponsors are my colleague on the full committee, Mr. Dingell, and Mr. Carney, a member of the subcommittee. This bill is identical to the bill introduced in the Senate by Senators Hart and Magnuson—S. 945.

I should also like to announce that today I shall introduce another bill entitled the National No-Fault Motor Vehicle Insurance Act in order to have it before the subcommittee during these hearings. This bill is based on H.R. 4994 but contains numerous technical improvements and two policy changes. First, it adopts the 36-month period suggested in the Secretary of Transportation's report as the period over which loss of income must be insured against. Second, it eliminates the distinction between "ordinary passenger vehicles" and "larger vehicles" which is a departure from the no-fault concept.

(The text of House Concurrent Resolution 241 and H.R. 4994 and similar bills, with departmental reports thereon, follow :)

[H. Con. Res. 241, 92d Cong., 1st sess., introduced by Mr. Staggers (for himself and Mr. Springer) on March 29, 1971]

## CONCURRENT RESOLUTION

Whereas the existing system for compensating motor accident victims results in the unavailability of any benefits to many persons sustaining loss arising out of motor vehicle accidents, including many seriously injured persons and the dependents of many persons killed in such accidents; and

Whereas the existing system's uneven allocation of compensation benefits results in the excessive compensation of many persons sustaining only minor loss, and whereas by contrast many persons with severe and permanently crippling injuries recover only a fraction of their losses in compensation benefits from the system; and

Whereas administration of the system consumes an inordinate amount of resources which might be put to better use in compensating accident victims; and

Whereas the system's benefits tend to be ill-timed and unresponsive to victims' needs both because of long delays in payment and because benefits are predominantly in the form of lump-sum payments, and whereas effective rehabilitation of the accident victim tends to be a practical impossibility under the system; and

Whereas the system is supported by, and dependent upon, compulsory insurance or financial responsibility laws which exert varying degrees of compulsion upon motorists to purchase liability insurance without invariably assuring motorists of the availability of automobile insurance; and

Whereas the counterproductive regulatory pressures placed by the system on insurers has led to the development of socially undesirable competition in risk selection accompanied by arbitrary and capricious declinations of insurance, cancellations and refusals of renewal with the consequent growth of a high-risk automobile insurance market serviced in some cases by insurers of questionable financial stability; and

Whereas the system has imposed intolerable burdens on State officials responsible for regulating the rating, underwriting, and claims practices of insurers and responding to consumer complaints relating thereto; and

Whereas the system has placed an unreasonable workload on the Federal and State courts which have been forced to devote a disproportionate part of their time and resources to motor vehicle accident civil litigation; and

Whereas the system has resulted in the denial of substantial and equal justice to seriously injured accident victims who are unable to withstand the financial burdens consequent upon long court delays and who are, therefore, forced into inadequate settlements of their claims; and

Whereas the existing liability insurance system renders it impossible rationally to allocate insurance premium costs so as to reflect the ability of a motor vehicle to protect its occupants from serious injury in the event of a crash or to reflect differing costs of repairing motor vehicles; and

Whereas, however, prompted by the automobile insurance and accident insurance study mandated by Congress, the hearings of congressional committees and the various hearings and studies conducted by many State legislatures, it is now almost universally conceded that there is an imperative need for prompt and far-reaching reform; and

Whereas one State, the Commonwealth of Massachusetts, has taken the lead by enacting the first partial no-fault plan in the country and many of the State legislatures are even now considering far-reaching reforms suited to the needs of their constituencies; and

Whereas the principal problems and abuses with respect to automobile insurance clearly stem from defects in the system for compensating accident victims and from the compulsions upon motorists to obtain the insurance which sustains and upholds that system rather than from defects in the insurance institution or in its regulation by the several States; and

Whereas assumption of the present comprehensive State regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable; and

Whereas mere speculation without actual observation of experi-



ence with a new plan is an inadequate basis for massive, uniform national reform; and

Whereas one State, Massachusetts, has taken an important step toward the principles endorsed herein, and others promise to do so soon so that variants of the plan we endorse will, in the laboratory of the several States, soon be proved and perfected by experience: Now, therefore, be it

1        *Resolved by the House of Representatives (the Senate*  
 2 *concurring)*, That it is the sense of the Congress that the  
 3 regulation of insurance should, in general, continue with the  
 4 States, subject to the admonition, however, that Congress  
 5 cannot, and will not, long ignore the need for evolving new  
 6 and updated approaches to insurance and accident compen-  
 7 sation.

8        That it is the further sense of the Congress that there  
 9 must evolve at the State level a rational, equitable, and com-  
 10 patible reparation system for motor vehicle accident victims  
 11 supported and sustained by a similarly rational, equitable,  
 12 and compatible private insurance system, such combined sys-  
 13 tem to be built upon the following principles:

14            (1) Basic benefits should be forthcoming to the  
 15 injured person on a first-party, contractual basis to the  
 16 end that such person would be receiving benefits from  
 17 the insurer with whom he has contracted and to whom  
 18 he has paid his premiums and to the further end that  
 19 competition among insurers would take the form of



1 competition to provide prompter and more effective  
2 compensation for the premium payer.

3 (2) Basic benefits under the reparations system  
4 should be payable to all accident victims without regard  
5 to fault, excluding, of course, those who willfully injure  
6 themselves.

7 3. Such benefits should provide compensation for  
8 all economic loss, subject to reasonable deductibles and  
9 limits, and the tort lawsuit should be eliminated, at least  
10 pro tanto, avoiding the adversary process for the mass  
11 of accidents.

12 4. The function of the reparations system should be  
13 to afford adequate, but not excessive, compensation to  
14 the accident victim at minimum cost. Therefore, the  
15 benefits obtainable by the accident victim from other  
16 benefit sources should be coordinated and meshed with  
17 those obtainable from the automobile accident repara-  
18 tions system with a view toward internalizing automo-  
19 bile accident loss costs by making automobile insurance  
20 the primary benefit source whenever feasible.

21 5. Maximum choice should be afforded the motorist  
22 in selecting his insurance source provided the coverage  
23 complies with the principles for the required minimum  
24 mandatory coverage.

25 6. Rehabilitation, avocational as well as vocational.

1       should be a primary function and objective of the com-  
2       pensation system.

3       That it is the further sense of the Congress that the  
4 Secretary of Transportation be authorized and directed to  
5 request that the Council of State Governments, using the  
6 appropriate instrumentalities, develop model legislation for  
7 submission to the States for their consideration. The Secre-  
8 tary is further authorized and directed to analyze the actions  
9 of the States, their legislatures and insurance regulatory  
10 officials to determine to what extent such States act here-  
11 after to bring about motor vehicle insurance and accident  
12 compensation systems consistent with the intent of this  
13 resolution; to provide technical assistance to and interact  
14 with such States, their legislatures and insurance regulatory  
15 officials in effecting in all the States compensation systems  
16 consistent with such principles, and to report such progress  
17 as has been made, or is being made, in effecting such com-  
18 pensation systems, with a final report to be made by the  
19 Secretary not later than twenty-five months hereafter de-  
20 tailing the action taken by each State in moving toward  
21 or providing an automobile accident compensation system  
22 consistent with these principles; the experience of the States  
23 with these systems; and, concluding with the Secretary's  
24 views regarding the feasibility of attaining a satisfactory  
25 and compatible motor vehicle accident reparations system  
26 without further Federal legislation.

[H.R. 4994, 92d Cong., 1st sess., introduced by Mr. Moss (for himself, Mr. Dingell, and Mr. Carney) on February 25, 1971;  
 [H.R. 6528, 92d Cong., 1st sess., introduced by Mr. Halpern on March 23, 1971, are similar as follows:]

## A BILL

To regulate interstate commerce and to provide for the general welfare by requiring certain insurance as a condition precedent to using the public streets, roads, and highways in order to have an efficient system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance, and the presentation of meaningful price information, and which will provide sufficient, fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce. and otherwise affecting such commerce.

- 1        *Be it enacted by the Senate and House of Representa-*
- 2        *tives of the United States of America in Congress assembled,*
- 3        That this Act may be cited as the "Uniform Motor Vehicle
- 4        Insurance Act".

## DEFINITIONS

## SEC. 2. As used in this Act—

(1) The term “motor vehicle” means any vehicle driven or drawn by electrical or mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(2) (A) The term “insured motor vehicle” means a motor vehicle insured under a policy of insurance which meets the requirements of section 5 of this Act.

(B) The term “uninsured motor vehicle” means a motor vehicle with respect to which insurance provided under section 5 of this Act is not applicable at the time of the accident, or with respect to which the insurer nominally providing such insurance denies coverage, or is financially unable to fulfill its obligation.

(3) The term “owner” means a person who holds the legal title to a motor vehicle as defined in paragraph (1) of this section, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purpose of this Act.

(4) The term “person” means any individual, partnership, corporation, association, trust, syndicate, or other entity.

1       (5) The term "insurer" means any enterprise engaged  
2 in the business of issuing motor vehicle insurance policies.

3       (6) "Operation or use of a motor vehicle" includes load-  
4 ing or unloading the vehicle, but does not include conduct  
5 within the course of a business of repairing, servicing, or  
6 otherwise maintaining vehicles unless the conduct occurs out-  
7 side the business premises.

8       (7) The term "motor vehicle accident" means a specifi-  
9 cally unexpected occurrence arising out of the operation or  
10 use of a motor vehicle as a motor vehicle.

11       (8) The term "injury" means bodily injury, cata-  
12 strophic harm, sickness or disease caused by motor vehicle  
13 accident while in or upon or entering into or alighting from,  
14 or through being struck by, a motor vehicle.

15       (9) The term "catastrophic harm" means permanent  
16 and total disability (including death at any time resulting  
17 from injury) or permanent and partial disability of 70 per  
18 centum or more. The term "catastrophic harm" includes dis-  
19 figurement that is permanent, severe, and irreparable.

20       (10) The term "economic loss" means in the case of  
21 injury or death:

22               (A) all appropriate and reasonable expenses neces-  
23 sarily incurred for medical, hospital, surgical, professional  
24 nursing, dental, ambulance, and prosthetic services;

25               (B) all appropriate and reasonable expenses neces-

1 sarily incurred for physical and occupational therapy and  
2 rehabilitation;

3 (C) an amount equal to \$1,000 or 85 per centum  
4 of the monthly earnings at the time of the injury, which-  
5 ever is less, for as long a period as the injury causes the  
6 inability to engage in gainful activity substantially the  
7 same or similar to that engaged in prior to the injury:  
8 *Provided, however, That, in the case of injury such*  
9 *period shall not exceed thirty months, and that in the*  
10 *case of death, an amount which shall not exceed*  
11 *\$30,000; and*

12 (D) all appropriate and reasonable expenses neces-  
13 sarily incurred as a result of such injury, including, but  
14 not limited to, expenses incurred in obtaining services  
15 in substitution of those that the injured person would  
16 have performed for the benefit of himself or his family.

17 (11) The term "earnings" means the pay or wages of  
18 an employee before any deductions, and the reasonable  
19 value of the services of a self-employed person before any  
20 deductions.

21 (A) "Monthly earnings at the time of the injury"  
22 shall be deemed to be one-twelfth of the average annual  
23 earnings at that time. If earnings are received on a  
24 weekly basis, the weekly equivalent of the monthly



1 earnings is deemed one-fifty-second of the average an-  
2 nual earnings.

3 (B) Average annual earnings are determined as  
4 follows:

5 (i) If the person worked in the employment  
6 or self-employment in which he was employed or  
7 self-employed at the time of his injury during sub-  
8 stantially the whole year immediately preceding the  
9 injury and the employment was in a position, or  
10 the self-employment was of such nature, that an  
11 annual rate of pay—

12 (I) was fixed, the average annual earn-  
13 ings are the annual rate of pay; or

14 (II) was not fixed, the average annual  
15 earnings are the product obtained by multiply-  
16 ing his daily earnings, or the average thereof if  
17 the daily earnings have fluctuated, by 300 if he  
18 was employed or self-employed on the basis of  
19 a 6-day workweek, 280 if employed, or self-  
20 employed on the basis of a  $5\frac{1}{2}$ -day workweek,  
21 and 260 if employed or self-employed on a basis  
22 of a 5-day workweek.

23 (ii) If the person did not work in the employ-  
24 ment or the self-employment in which he was em-

1           employed or self-employed at the time of his injury  
2           substantially the whole year immediately preceding  
3           the injury, but the employment or self-employment  
4           would have afforded employment or self-employ-  
5           ment for substantially a whole year, the average  
6           annual earnings are a sum equal to the average an-  
7           nual earnings of an employee or self-employed per-  
8           son of the same class working substantially the  
9           whole immediately preceding year in the same or  
10          similar employment or self-employment in the same  
11          or neighboring place as determined under clause (i)  
12          of this subparagraph.

13          (12) The term "net economic loss" means, in the case  
14          of injury or death, economic loss reduced (but not below  
15          zero) by the amount of any benefit or payment received, or  
16          entitled to be received, for losses resulting from such injury  
17          or death under any private or public insurance or plan or  
18          other source of benefits, other than a benefit or payment  
19          received, or entitled to be received—

20                (A) in discharge of familial obligations of support;

21                (B) by way of succession at death;

22                (C) as proceeds of life insurance;

23                (D) as gratuities;

24                (E) as proceeds of any private or public insurance

1 or plan or other source of benefits containing explicit pro-  
2 visions making its benefits supplemental to those paid in  
3 accordance with the provisions of section 5 (a) of this  
4 Act.

5 If any private or public insurance or plan or other source  
6 of benefits does not provide that its benefits shall be supple-  
7 mental to those under section 5 (a) of this Act, or that the  
8 benefits under section 5 (a) shall be deducted from its bene-  
9 fits, economic loss shall be reduced by the amount of any  
10 benefit or payment received, or entitled to be received, from  
11 such private or public insurance or plan or other source of  
12 benefits.

13 (13) The term "without regard to fault" means irre-  
14 spective of fault as a cause of injury or death, and without  
15 application of the principle of liability based on negligence.

16 (14) The term "interstate commerce" means trade or  
17 commerce among the several States, or between the District  
18 of Columbia or any possession of the United States and any  
19 State or other possession, or within the District of Columbia.

20 (15) The term "Secretary" means the Secretary of  
21 Transportation.

22 (16) The term "State" means any State or possession  
23 of the United States, the District of Columbia, and the Com-  
24 monwealth of Puerto Rico.

## 1      CONDITIONS OF OPERATION: REGISTRATION AND FEES

2      SEC. 3. (a) (1) After the effective date of this section,  
3 no person shall register nor knowingly operate or use a motor  
4 vehicle as defined in section 2 (1) of this Act upon the  
5 public streets, roads, and highways of any State at any time,  
6 unless such motor vehicle is insured under a policy of insur-  
7 ance which meets the requirements of section 5 of this Act,  
8 pursuant to such rules and regulations (including those deter-  
9 mining the manner and term of proof of such insurance) as  
10 the Secretary shall lawfully prescribe.

11      (2) The requirements of this section may be satisfied  
12 by any person by providing a surety bond, proof of qualifica-  
13 tions as a self-insurer, or other securities affording security  
14 substantially equivalent to that afforded under section 5 of  
15 this Act, as determined and approved by the Secretary.

16      (b) No State shall require the purchase or acquisition  
17 of insurance or any other security as a condition to the opera-  
18 tion or use of any motor vehicle upon the public streets,  
19 roads, and highways of such State, other than the insurance  
20 required under section 5 of this Act.

21      (c) The provisions of this section and section 4 shall  
22 take effect one year and six months after the date of enact-  
23 ment of this Act.

24      (d) Any person who knowingly violates the provisions  
25 of subsection (a) of this section shall be guilty of a misde-

1 meanor and upon conviction thereof, shall be punished by a  
2 fine not to exceed \$1,000 or imprisonment for a period of  
3 not to exceed one year, or both.

4 TORT EXEMPTION: LIABILITY FOR CATASTROPHIC HARM

5 SEC. 4. No owner, operator or user of an insured motor  
6 vehicle shall be liable for tort damages of any nature occa-  
7 sioned by bodily injuries arising out of the negligent opera-  
8 tion or use of such vehicle except in cases of catastrophic  
9 harm. In such cases there may be a recovery for economic  
10 loss in excess of that received, or entitled to be received under  
11 this Act, as well as for other elements of damage.

12 INSURANCE REQUIREMENTS

13 SEC. 5. (a) In order to meet the requirements of sections  
14 3 (a) and (b) of this Act, an insurance policy shall provide  
15 net economic loss benefits for injury and death as follows:

16 (1) Except as otherwise provided in paragraph  
17 (3), the insurer shall pay, without regard to fault, to  
18 any person, including the owner, operator or user of an  
19 insured motor vehicle, an amount equal to the net eco-  
20 nomic loss sustained by such person for injury as defined  
21 in section 2 (8) of this Act.

22 (2) Except as otherwise provided in paragraph  
23 (3), the insurer shall pay, without regard to fault, to  
24 the legal representative of any person, including the

1 owner, operator, or user of an insured motor vehicle,  
2 whose death is the result of injury, for the benefit of  
3 the surviving spouse and any dependent (as defined in  
4 section 152 of the Internal Revenue Code of 1954) of  
5 such person, an amount equal to the net economic loss  
6 sustained by such spouse and dependent as a result of  
7 the death of such person;

8 (3) No payment shall be made for net economic  
9 loss sustained by—

10 (A) the occupants of another motor vehicle; or

11 (B) the operator or user of a motor vehicle  
12 while committing a felony, or operating or using  
13 with the specific intent of causing injury or damage,  
14 or operating or using a motor vehicle as a converter  
15 without a good faith belief that he is legally entitled  
16 to operate or use such vehicle.

17 (4) Payments for net economic loss shall be made  
18 as such loss is incurred except that in the case of death,  
19 payment for such loss shall be made immediately.  
20 Amounts of net economic loss unpaid thirty days after  
21 the insurer has received reasonable proof of the fact  
22 and amount of loss realized, and demand for payment  
23 thereof, shall thereafter bear interest at the rate of 2 per  
24 centum per month.

25 (5) A claim for net economic loss based upon in-



jury or death to a person who is not an occupant of any motor vehicle involved in an accident may be made against the insurer of any involved vehicle. The insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but such insurer shall thereafter be entitled to recover from the insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.

(6) Net economic loss sustained by any occupant, operator, or user of a commercial motor vehicle shall be paid by the insurer of such commercial motor vehicle.

(7) (A) When one or more of the motor vehicles involved in an accident is larger than an ordinary passenger automobile, the insurer of the larger vehicle shall be responsible for a percentage of any net economic loss paid to occupants involved in the accident.

(B) The Secretary shall classify, by rules and regulations under the procedures established in section 553 of title 5, United States Code, all motor vehicles larger than ordinary passenger automobiles into reasonable categories, and shall assign to each category a percentage of responsibility for net economic loss sustained by occupants of other vehicles: *Provided, That, such*

1 classifications and percentages of responsibility shall  
2 be based upon the increased severity of injury, caused  
3 by large vehicles in comparison to ordinary passenger  
4 automobiles: *Provided, further,* That if a larger vehicle  
5 is liable for more than 70 per centum of the net eco-  
6 nomic loss, such insurer may control the processing of  
7 any claims for such loss and be entitled to obtain contri-  
8 bution from insurers liable for the remainder of the  
9 benefits.

10 (C) For purposes of subparagraphs (A) and (B)  
11 of this paragraph, the term "ordinary passenger auto-  
12 mobile" means any motor vehicle (including a motor-  
13 cycle or motorscooter) used primarily for the transpor-  
14 tation of passengers, having a seating capacity of less  
15 than ten passengers, having two or less axles, and weigh-  
16 ing, without cargo or passengers, less than six thousand  
17 pounds.

18 (b) In addition to the coverage described in subsection  
19 (a), a policy shall provide the following optional cata-  
20 strophic harm insurance in order to meet the requirements  
21 of sections 3 (a) and 3 (b) :

22 (1) At the option of the insured, the insurer shall  
23 offer a provision for legal liability for catastrophic harm  
24 arising out of the negligent operation or use of a motor

vehicle, to a limit of, at least \$50,000 for any one person, and \$300,000 for all persons in any one accident.

(2) At the option of the insured, the insurer shall offer a provision undertaking to pay to the insured all sums, not in excess of the limits of liability provided by the insured's liability insurance, which such insured is legally entitled to recover as damages for catastrophic harm arising out of operation or use of any uninsured motor vehicle.

(c) Any such policy of insurance described in this section may contain—

(1) additional coverages and benefits with respect to any injury, death, property damage, or any other loss from motor vehicle accidents; and

(2) terms, conditions, exclusions and deductible clauses; consistent with the required provisions of such policy and approved by the Secretary, who shall only approve terms, conditions, exclusions, deductible clauses, coverages, and benefits which are fair and equitable, and which limit the variety of coverages available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers.

(d) (1) An application for a policy of insurance which meets the requirements of subsection (a) of this section may

1 not be rejected by an insurer, nor shall such policy of insur-  
2 ance once issued, be canceled or refused renewal, by an  
3 insurer except for (A) suspension or revocation of the  
4 license of an owner or principal operator to operate a motor  
5 vehicle, or (B) failure to pay the premium for such policy  
6 after reasonable demand therefor: *Provided*, That twenty  
7 days written notice is given to the insured with respect to  
8 paragraphs (A) and (B) of this subsection.

9 (2) An insurer may reject or refuse to accept additional  
10 applications for, or policies of, insurance which meet the re-  
11 quirements of subsection (a) of this section if the domiciliary  
12 state supervisory authority of such insurer deems in writing  
13 that the solvency of such insurer would be impaired by the  
14 writing of additional policies of such insurance.

15 (3) Whoever knowingly violates, or conspires to violate,  
16 the provisions of paragraph (1) of this subsection shall be  
17 guilty of a misdemeanor and upon conviction thereof shall be  
18 punished by a fine not to exceed \$1,000 for each violation.

19 UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

20 SEC. 6. (a) The Secretary shall, after consultation with  
21 the insurers and State insurance supervisory authorities,  
22 promulgate a common, uniform statistical plan for the alloca-  
23 tion and compilation of claims and loss experience data for  
24 each coverage under section 5 of this Act, and upon promul-  
25 gation, such plan shall be followed by every insurer writ-

1 ing policies of insurance which meet the requirements of  
2 section 5 of this Act, and by every rating or advisory organi-  
3 zation or statistical agent named by any such insurer to  
4 gather, compile, or report claims and loss experience data.

5 (b) Such statistical plan shall contain data pertaining  
6 to the claims and loss experience for the classes of risk in each  
7 rating territory within each coverage under section 5 of this  
8 Act: *Provided, however,* That such statistical plan shall not  
9 contain data pertaining to expenses for adjusting losses, under-  
10 writing expenses, general administration expenses, or any  
11 other expense experience for any class of risk in each rating  
12 territory within the coverages under section 5 of this Act:  
13 *Provided, further,* That in carrying out the provisions of this  
14 section, no insurer, rating, or advisory organization, or sta-  
15 tistical agent, or any other association of insurers, shall pool,  
16 or in any manner combine, any such expenses or expense ex-  
17 perience, or otherwise act in concert with respect thereto.

18 (c) Every insurer writing policies of insurance which  
19 meet the requirements of section 5 of this Act, and every  
20 rating or advisory organization or statistical agent named by  
21 such insurer to gather or compile claims and loss experience  
22 data, shall report such data in accordance with the provi-  
23 sions of the statistical plan required by this section at such  
24 times and in such manner as the Secretary shall by rules and  
25 regulations lawfully prescribe.



1       (d) The Secretary shall require standard uniform and  
2 standard minimal—

3       (1) policy provisions for each coverage under sec-  
4 tion 5 of this Act; and

5       (2) classes of risk and rating territories for each  
6 coverage under section 5 of this Act;

7 in order to accomplish the purposes of the statistical plan  
8 required by this section.

9       (e) Every insurer writing policies of insurance which  
10 meet the requirements of section 5 of this Act shall provide  
11 the Secretary with the actual rate or premium being charged  
12 for each class of risk in each rating territory within each  
13 coverage under section 5 of this Act at such times and in  
14 such manner as the Secretary shall by rules and regulations  
15 prescribe.

16       (f) The Secretary may, after consultation with the in-  
17 surers and State insurance supervisory authorities, appoint  
18 a statistical agent or agents, to receive, gather, compile,  
19 report and analyze the claims and loss experience data, and  
20 actual rates or premiums, specified in subsections (c) and  
21 (e) of this section.

22       (g) From time to time, but not less than semiannually,  
23 the Secretary shall analyze and freely and fully make avail-  
24 able to the State insurance supervisory authorities and to the  
25 general public, with respect to every insurer writing policies

1 of insurance which meet the requirements of section 5 of this  
2 Act, a comparison of such insurer's indicated rate based upon  
3 the claims and loss experience data for each class of risk in  
4 each rating territory within each coverage with the actual  
5 rate or premiums being charged by the insurer for such  
6 class of risk in each rating territory within such coverage.  
7 The claims and loss experience data, and actual rates or  
8 premiums specified in subsections (c) and (e) of this sec-  
9 tion shall be made available to the general public at such  
10 times and in such manner as the Secretary shall by rules  
11 and regulations prescribe.

12 (h) Any insurer writing policies of insurance which  
13 meet the requirements of section 5 of this Act, or any rating  
14 or advisory organization or statistical agent named by any  
15 such insurer to gather, compile or report claims and loss  
16 experience data, who willfully fails to:

17 (1) follow the statistical plan promulgated in ac-  
18 cordance with subsections (a) and (b) of this section,  
19 or

20 (2) observe the prohibition in subsection (b) of  
21 this section against pooling, or in any manner combin-  
22 ing expense experience, or

23 (3) report to the Secretary, or his statistical agent  
24 or agents, the claims and loss experience data as required  
25 in subsections (c) and (f) of this section, or

1           (4) follow any standard uniform or standard mini-  
2           mal policy provisions or classes of risk promulgated by  
3           the Secretary as required in subsection (d) of this  
4           section, or

5           (5) provide the Secretary, or his statistical agent  
6           or agents, with the actual rate or premium being charged  
7           for each class of risk in each rating territory within such  
8           coverage as required in subsections (e) and (f) of this  
9           section,  
10          shall be guilty of a misdemeanor, and upon conviction there-  
11          of, shall be punished by a fine not to exceed \$5,000 for each  
12          violation.

#### 13                                   ASSIGNED CLAIMS PLAN

#### 14                                   Organization and Maintenance

15          SEC. 7. (a) The Secretary shall, after consultation with  
16          the insurers and State insurance supervisory authorities,  
17          organize an assigned claims bureau and assigned claims  
18          plan in each State. Upon organization, each such bureau  
19          and plan shall be maintained, subject to regulation by the  
20          applicable State insurance supervisory authority, by the in-  
21          surers writing policies of insurance under section 5 of this  
22          Act in such State. In default of the continued maintenance  
23          of an assigned claims bureau and assigned claims plan in  
24          any State in a manner considered by the Secretary to be

1 consistent with the provisions of this Act, the Secretary  
2 shall maintain such bureau and plan.

### 3 Costs of Operation

4 (b) The costs incurred in the operation of each assigned  
5 claims bureau and assigned claims plan shall be assessed  
6 against insurers in each State by the applicable State insur-  
7 ance supervisory authority according to rules and regula-  
8 tions that assure fair allocations among such insurers writing  
9 policies of insurance under section 5 of this Act in the State,  
10 on a basis reasonably related to the volume of insurance  
11 under subsection (a) of section 5 of this Act.

### 12 Insurers Required to Participate

13 (c) Every insurer writing policies of insurance under  
14 section 5 of this Act is required to participate in the assigned  
15 claims bureau and assigned claims plan in each and every  
16 State in which such insurer is authorized to write such policies  
17 of insurance.

### 18 Persons Entitled to Claim Through Assigned Claims Plan:

#### 19 Benefits to Which Entitled

20 (d) Except as provided in subsection (e) of this section,  
21 each person sustaining injury (as defined in section 2 (8) of  
22 this Act) may obtain the insurance benefits under subsection  
23 (a) of section 5 of this Act through the assigned claims

1 bureau and assigned claims plan in the State in which such  
2 person resides if—

3 (1) no such insurance benefits are applicable to  
4 the injury or death; or

5 (2) no such insurance benefits applicable to the  
6 injury or death can be identified; or

7 (3) the only identifiable insurance benefits under  
8 subsection (a) of section 5 of this Act applicable to the  
9 injury or death are, because of financial inability of one  
10 or more insurers to fulfill their obligations, inadequate to  
11 provide such benefits.

12 Persons Disqualified From Receiving Benefits

13 (e) A person shall be disqualified from receiving bene-  
14 fits through any assigned claims bureau and assigned claims  
15 plan established pursuant to this Act if—

16 (1) such person is disqualified under section 5 (a)

17 (3) (B) of this Act from receiving the insurance benefits  
18 under section 5 (a) of this Act, or

19 (2) such person is the owner or registrant of a  
20 motor vehicle which was not insured under section 5 (a)  
21 of this Act at the time of its involvement in the accident  
22 out of which such person's injury arose.

23 (f) A claim or claims arising from injury or death to  
24 one person sustained in one accident and brought through the  
25 applicable assigned claims plan shall be assigned to one



1 insurer, or to the applicable assigned claims bureau, which  
2 after such assignment shall have rights and obligations as if  
3 having issued a policy of insurance containing the benefits  
4 under subsection (a) of section 5 of this Act.

#### 5 Principle of Assignment

6 (g) The assignment of claims shall be made according  
7 to rules and regulations that assure fair allocation of the bur-  
8 den of assigned claims among insurers doing business in the  
9 particular State on a basis reasonably related to the volume of  
10 insurance written under subsection (a) of section 5 of this  
11 Act.

#### 12 Notification of Bureau by Claimant for Assignment of His

#### 13 Claim

14 (h) A person or his legal representative claiming  
15 through an assigned claims plan shall notify the applicable  
16 bureau of his claim within the time that would have been  
17 allowed for filing an action for the insurance benefits under  
18 subsection (a) of section 5 of this Act had there been in  
19 effect identifiable coverage applicable to the claim. The  
20 bureau shall promptly assign the claim and notify the claim-  
21 ant of the identity and address of the insurer to which the  
22 claim is assigned, or of the bureau if the claim is assigned to  
23 it. No action by the claimant against the insurer to which his  
24 claim is assigned, or against the bureau if the claim is as-  
25 signed to it, shall be commenced later than sixty days after

1 receipt of notice of the assignment or the last date on which  
2 the action might have been commenced had it been against  
3 the insurer of identifiable coverage applicable to the claim,  
4 whichever is later.

#### 5 Costs of Assigned Claims Plan

6 (i) All reasonable and necessary costs incurred in the  
7 handling and disposition of assigned claims, including amount  
8 paid pursuant to assessments under subsection (b) of this  
9 section may be considered in making or regulating rates for  
10 the insurance under subsection (a) of section 5 of this Act:  
11 *Provided, however,* That if such costs are considered in the  
12 rates or premiums for such insurance, the pure loss portion  
13 of such costs shall be reported separately under the uniform  
14 statistical plan provided for by section 6 of this Act, and  
15 that portion of the actual rate or premium being charged for  
16 such insurance attributable to the entire amount of such  
17 costs incurred in the handling and disposition of assigned  
18 claims shall be reported separately under subsection (e) of  
19 section 6 of this Act.

#### 20 Reimbursement

21 (j) An insurer who makes an assigned claims payment  
22 shall be reimbursed, without regard to fault, by the owner  
23 or registrant of a motor vehicle which was not insured under  
24 section 5 (a) of this Act at the time of the accident out of  
25 which such assigned claim arose.

1 INSURERS' FRAUDULENT OR ARBITRARY DENIAL OF CLAIMS

2 SEC. 8. Within the discretion of any court, a person  
3 making claim under a policy of insurance which meets the  
4 requirements of section 5 of this Act may be allowed an  
5 award of a reasonable sum for attorney's fee and all reason-  
6 able costs of suit where the insurer's denial of all or part of  
7 the claim was fraudulent or so arbitrary as to have no rea-  
8 sonable foundation.

9 FRAUDULENT OR EXCESSIVE CLAIMS

10 SEC. 9. Within the discretion of any court, an insurer or  
11 any person who qualifies as a self-insurer under section 3 (a)  
12 (2) may be allowed an award of a reasonable sum as at-  
13 torney's fee and all reasonable costs of suit for its defense  
14 against a person making claim against such insurer or self-  
15 insurer where such claim was fraudulent or so excessive as to  
16 have no reasonable foundation, and such attorney's fee and  
17 all such reasonable costs of suit so awarded may be treated  
18 as an offset against any benefits due or to become due to  
19 such person.

20 ADMINISTRATION

21 SEC. 10. In order to carry out the provisions and fulfill  
22 the purpose of this Act, the Secretary shall—

23 (1) consult with representatives of State agencies  
24 charged with the regulation of the business of insurance,  
25 representatives of the private insurance business, and

1       such other persons, organizations, and agencies of the  
2       Federal, State, or local governments as he deems neces-  
3       sary; and

4           (2) make, promulgate, amend, and repeal such  
5       rules and regulations under the procedures established  
6       in section 553 of title 5, United States Code, as he deems  
7       necessary.

8                   **AUTHORIZATION AND APPROPRIATIONS**

9       **SEC. 11.** There are authorized to be appropriated such  
10      sums as may be necessary to carry out the provisions of this  
11      Act, including, but not limited to, the appointment of a statis-  
12      tical agent or agents, and the organization of an assigned  
13      claims bureau and assigned claim plan in each State.

14                   **SEPARABILITY CLAUSE**

15       **SEC. 12.** If any provision of this Act is declared un-  
16      constitutional, or the applicability thereof to any person or  
17      circumstances is held invalid, the constitutionality of the re-  
18      mainder of the Act and the applicability thereof to other  
19      persons and circumstances shall not be affected thereby.

20                   **EFFECTIVE DATE**

21       **SEC. 13.** Except as otherwise provided in section 3 (c),  
22      this Act shall become effective one year after the date of its  
23      enactment.

[H.R. 4995, 92d Cong., 1st sess., introduced by Mr. Moss (for himself, Mr. Dingell, and Mr. Carney) on February 25, 1971]

# A BILL

To promote the greater availability of motor vehicle insurance in interstate commerce under more efficient and beneficial marketing conditions.

1       *Be it enacted by the Senate and House of Representatives*  
2   *of the United States of America in Congress assembled,*  
3   That this Act may be cited as the “Motor Vehicle Group  
4   Insurance Act”.

## DEFINITIONS

6      SEC. 2. As used in this Act—

(1) The term "insurer" means any enterprise engaged in the business of issuing or reinsuring motor vehicle insur-



1   ance policies in interstate commerce or engaged in the  
2   business of issuing motor vehicle insurance that is reinsured  
3   (in whole or in part) in interstate commerce.

4       (2) The term "group insurance" means any plan of  
5   motor vehicle insurance offered or provided to members of  
6   a group not organized solely for the purpose of obtaining  
7   insurance, under the terms of a master policy or operating  
8   agreement between an insurer and the group sponsor, and  
9   incorporating group average rating, guaranteed issue with  
10   or without minimum eligibility requirements, group experi-  
11   ence rating, employer contributions, or any other benefits to  
12   the members as insureds that they may be unable to obtain  
13   in the ordinary channels of insurance marketing on an in-  
14   dividual basis. The term "group sponsor" means the em-  
15   ployer or other representative entity of an employment-based  
16   group or the administrative representative of any other type  
17   of group.

18       (3) The term "interstate commerce" means trade or  
19   commerce among the several States, or between the District  
20   of Columbia or any possession of the United States and any  
21   State or other possession, or within the District of Columbia.

22       (4) The term "State" means any State or possession  
23   of the United States, the District of Columbia, and the Com-  
24   monwealth of Puerto Rico.

1       (5) The term "Attorney General" means the Attorney  
2 General of the United States.

3       REMOVING RESTRICTIONS ON GROUP INSURANCE

4       SEC. 3. (a) No State shall—

5           (1) prohibit, inhibit, restrict, or condition, by means  
6 of fictitious group statutes or regulations, agency licens-  
7 ing requirements, application of prohibitions of unfair  
8 discrimination, eligibility provisions, or otherwise, the  
9 issuance and marketing of group insurance; or

10          (2) penalize or deny authority to an insurer be-  
11 cause of its engagement or intention to engage in the  
12 marketing and issuance of group insurance.

13       (b) No State or group of insurers operating volun-  
14 tarily shall, directly or indirectly, include insureds under a  
15 plan of group insurance in the base used in determining as-  
16 signments to or assessments upon an insurer under an as-  
17 signed risk plan if such plan of group insurance precludes  
18 any individual underwriting by the insurer and if the  
19 group is not defined to exclude members characterized as  
20 being bad risks, unless the assigned risk plan provides a  
21 reasonable system of credit to the insurer for insureds under  
22 the group insurance plan who would otherwise be eligible for  
23 coverage under the assigned risk plan.

## ENFORCEMENT

2        SEC. 4. (a) Whenever it shall appear to the Attorney  
3 General that any person is engaged or is about to engage  
4 in any acts or practices that constitute or will constitute a  
5 violation of the provisions of this Act, he shall bring an  
6 action in the proper district court of the United States to  
7 enjoin such acts or practices, and upon a proper showing, a  
8 permanent or temporary injunction or restraining order  
9 shall be granted.

(b) Nothing in this section shall preclude an insurer or any other person from instituting legal process to enforce their rights under this Act or from using the provisions of this Act as an otherwise valid defense in any relevant legal action brought against them.

## JURISDICTION

SEC. 5. The district courts of the United States shall have exclusive jurisdiction of violations of this Act and of all suits brought to enforce it.



streets, roads, or highways, except any vehicle operated exclusively on a rail or rails.

(2) The term "insured motor vehicle" means a motor vehicle (A) which is insured under a qualifying no-fault policy, or (B) the owner of which is a self-insurer with respect to such vehicle.

(3) The term "uninsured motor vehicle" means a motor vehicle which is not an insured motor vehicle.

(4) The term "qualifying no-fault policy" means an insurance policy which meets the requirements of section 5 (a) (but such term does not refer to any provision of such a policy which relates solely to a coverage described in section 5 (b) or to an additional coverage or benefit referred to in section 5 (c) (1) (A) ).

(5) The term "owner" means a person who holds the legal title to a motor vehicle; except that, in the case of a motor vehicle which is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, such term means the debtor or lessee.

(6) The term "insurer" means any person engaged in the business of issuing motor vehicle insurance policies.

(7) The term "self-insurer" with respect to any motor vehicle means a person who has satisfied the



requirements of section 3 as they apply to such vehicle by means of surety bond, self insurance, or other security approved under section 3 (a) (2) .

(8) The term "operation, maintenance, or use" when used with respect to a motor vehicle includes loading or unloading the vehicle, but does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining vehicles unless the conduct occurs outside the premises of such business.

(9) The term "motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a motor vehicle.

(10) The term "accidental harm" means bodily injury, death, sickness, or disease caused by a motor vehicle accident while in or upon or entering into or alighting from, or through being struck by, a motor vehicle.

(11) The term "death" (except as used in this paragraph and paragraphs (10) and (12)) means accidental harm resulting at any time in death.

(12) The term "injury" means accidental harm not resulting in death.

(13) The term "catastrophic harm" means (A) death, or (B) other accidental harm resulting in (i) permanent and total disability, (ii) permanent and par-

1        tial disability of 70 per centum or more (determined  
2        under regulations of the Secretary), or (iii) disfigure-  
3        ment which is permanent, severe, and irreparable.

4            (14) The term "economic loss" with respect to any  
5        injury or death means—

6            (A) all appropriate and reasonable expenses  
7        necessarily incurred for medical, hospital, surgical,  
8        professional nursing, dental, ambulance, and pros-  
9        thetic services;

10          (B) all appropriate and reasonable expenses  
11        necessarily incurred for physical and occupational  
12        therapy and rehabilitation;

13          (C) an amount equal to the lesser of—

14            (i) \$1,000, or

15            (ii) 85 per centum of the monthly earnings  
16        at the time of the injury or death,

17        multiplied by the number of months (prorating pe-  
18        riods of less than one month in accordance with  
19        regulations of the Secretary) during which the in-  
20        jury or death results in the inability to engage in  
21        gainful activity substantially the same or similar to  
22        that engaged in prior to the injury or death; except  
23        that in the case of any injury or death, such period  
24        shall not exceed 36 months and the amount under  
25        this subparagraph shall not exceed \$36,000; and

(D) all appropriate and reasonable expenses necessarily incurred as a result of such injury or death, including, but not limited to, (i) expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family, and (ii) attorneys' fees and costs to the extent provided in section 8.

(15) The term "monthly earnings at the time of injury or death" means one-twelfth of the average annual earnings at the time of injury or death (determined in accordance with regulations of the Secretary). For purposes of this paragraph, the term "earnings" means the pay or wages of an employee before any deductions, and the reasonable value of the services of a self-employed person before any deductions.

(16) The term "net economic loss" means, in the case of injury or death, economic loss reduced (but not below zero) by the amount of any benefit or payment received (or legally entitled to be received and actually available to the claimant) for losses resulting from such injury or death under any private or public insurance or plan or other source of benefits, other than a benefit or payment received (or so entitled to be received and available) —

## 6

1 (A) in discharge of familial obligations of sup-  
2 port;

3 (B) by way of succession at death;

4 (C) as proceeds of life insurance;

5 (D) as gratuities; or

6 (E) as proceeds of any private or public insur-  
7 ance or plan or other source of benefits containing  
8 explicit provisions making its benefits supplemental  
9 to those paid under a qualified no-fault policy.

10 If any private or public insurance or plan or other  
11 source of benefits does not provide that its benefits  
12 shall be supplemental to those paid under a qualified  
13 no-fault policy, or that the benefits under such a policy  
14 shall be deducted from its benefits, economic loss shall  
15 be reduced by the amount of any benefit or payment  
16 received (or entitled to be received and actually avail-  
17 able to the claimant), from such private or public in-  
18 surance or plan or other source of benefits.

19 (17) The term "without regard to fault" means  
20 irrespective of fault as a cause of injury or death, and  
21 without application of the principle of liability based on  
22 negligence.

23 (18) The term "criminal conduct" means the com-  
24 mission of a felony, or operation or use of a motor vehicle

1 with the specific intent of causing injury or damage, or  
2 operation or use of a motor vehicle as a converter with-  
3 out a good faith belief that the operator or user is legally  
4 entitled to operate or use such vehicle.

5 (19) The term "Secretary" means the Secretary of  
6 Transportation.

7 (20) The term "State" means a State, the District  
8 of Columbia, the Commonwealth of Puerto Rico, the  
9 Virgin Islands, Guam, American Samoa, or the Canal  
10 Zone.

11 CONDITIONS OF OPERATION: REGISTRATION AND FEES

12 SEC. 3. (a) (1) No person may register any motor  
13 vehicle in a State or operate or use a motor vehicle upon any  
14 public street, road, or highway of any State at any time  
15 unless such motor vehicle is insured under a qualifying no-  
16 fault policy (as defined in section 2 (3) ), pursuant to such  
17 regulations (including those determining the manner and  
18 term of proof of such insurance) as the Secretary shall  
19 prescribe.

20 (2) The requirements of this subsection may be satis-  
21 fied by any owner of a motor vehicle if—

22 (A) such owner provides a surety bond, proof of  
23 qualifications as a self-insurer, or other securities afford-  
24 ing security substantially equivalent to that afforded



under a qualifying no-fault policy, as determined and approved by the Secretary under regulations, and

(B) the Secretary is satisfied that in case of injury or death, any claimant would have the same rights against such owner under applicable State law as the claimant would have had under such law had a qualifying no-fault policy been applicable to such vehicle.

(b) (1) No State may require the purchase or acquisition of insurance or other security as a condition to the ownership, registration, operation, or use of any motor vehicle upon the public streets, roads, or highways of such State, other than a qualifying no-fault policy.

(2) Paragraph (1) of this subsection shall not apply to a State requirement—

(A) respecting property damage insurance, or

(B) that common carriers, or commercial vehicles (as determined under State law), purchase or acquire insurance described in section 5 (b) within such limits or in such amounts as may be prescribed by State law (without regard to any limits of liability under such section 5 (b)).

(c) Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine not to exceed \$1,000 or imprisonment for a period of not to exceed one year, or both.

1 TORT EXEMPTION; LIABILITY FOR CATASTROPHIC HARM  
2 AND CRIMINAL CONDUCT

3 SEC. 4. (a) Except as provided in subsection (b), no  
4 person who is—

5 (1) the owner, operator, or user of an insured  
6 motor vehicle, or

7 (2) the operator or user of an uninsured motor  
8 vehicle who operates or uses such vehicle without any  
9 reason to believe that such vehicle is an uninsured motor  
10 vehicle,

11 shall be liable for tort damages of any nature occasioned by  
12 injury or death arising out of the ownership, maintenance,  
13 operation, or use of such vehicle.

14 (b) Subsection (a) shall not apply in cases of—

15 (1) catastrophic harm, or

16 (2) injury arising out of criminal conduct (as de-  
17 fined in section 2(18)).

18 In such cases there may be a recovery to the extent pro-  
19 vided by State law for economic loss in excess of that  
20 received, or entitled to be received under this Act, as well  
21 as for other elements of damage.

22 INSURANCE REQUIREMENTS

23 SEC. 5. (a) In order to be a qualifying no-fault policy,  
24 an insurance policy covering a motor vehicle shall provide  
25 net economic loss benefits for injury or death as follows:

(1) Except as otherwise provided in paragraph

(2) —

(A) in the case of injury to any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to such person an amount equal to the net economic loss sustained by such person as a result of such injury; and

(B) in the case of death of any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to the legal representative of such person, for the benefit of the surviving spouse and any dependent (as defined in section 152 of the Internal Revenue Code of 1954) of such person, an amount equal to the net economic loss sustained by such spouse and dependent as a result of the death of such person.

(2) No payment may be made for net economic loss sustained by—

(A) the occupants of a motor vehicle other than the insured motor vehicle; or

(B) the operator or user of a motor vehicle if such loss arises out of his criminal conduct (as defined in section 2(18)).

1           (3) Payments for net economic loss shall be made  
2       as such loss is incurred except that in the case of  
3       death, payment for such loss shall be made immediately.  
4       Amounts of net economic loss unpaid 30 days after  
5       the insurer has received reasonable proof of the fact and  
6       amount of loss realized, and demand for payment thereof,  
7       shall (after the expiration of such 30 days) bear interest  
8       at the rate of 2 per centum per month.

9           (4) A claim for net economic loss based upon injury  
10      to or death of a person who is not an occupant of any  
11      motor vehicle involved in an accident may be made  
12      against the insurer of any involved vehicle. The insurer  
13      against whom the claim is asserted shall process and pay  
14      the claim as if wholly responsible, but such insurer shall  
15      thereafter be entitled to recover from the insurers of all  
16      other involved vehicles proportionate contribution for  
17      the benefits paid and the costs of processing the claim.

18      (b) In addition to the coverage described in subsection  
19      (a), the insurer issuing a qualifying no-fault policy shall  
20      make available to the insured the following optional cata-  
21      strophic harm insurance:

22           (1) At the option of the insured, the insurer shall  
23      offer a provision for legal liability for catastrophic harm  
24      arising out of the ownership, operation, maintenance, or

1 use of a motor vehicle, to a limit of, at least \$50,000  
2 for any one person, and \$500,000 for all persons in  
3 any one accident. The insurer shall also offer a provision  
4 for such liability to any lesser limits which the insured  
5 elects and which are in conformity with regulations of the  
6 Secretary under section 6(d) (1).

7 (2) At the option of the insured, the insurer shall  
8 offer a provision undertaking to pay to the insured the  
9 lesser of—

10 (A) the amount by which—

11 (i) any sums such insured is legally en-  
12 titled to recover as damages for catastrophic  
13 harm arising out of the operation, maintenance,  
14 or use of any motor vehicle other than the in-  
15 sured motor vehicle, exceed

16 (ii) the aggregate amounts (if any) which  
17 the insurer of such other vehicle (and any other  
18 persons) pay with respect to such damages; or

19 (B) an amount equal to the limits of liability  
20 provided by the insured's liability insurance under  
21 paragraph (1).

22 (c) (1) Any policy of insurance described in this sec-  
23 tion may contain—

24 (A) additional coverages and benefits with respect



1 to any injury, death, property damage, or any other  
2 loss from motor vehicle accidents; and

3 (B) terms, conditions, exclusions, and deductible  
4 clauses;

5 consistent with the required provisions of such policy and  
6 approved by the Secretary, who shall only approve terms,  
7 conditions, exclusions, deductible clauses, coverages, and  
8 benefits which are fair and equitable, and which limit the  
9 variety of coverage available so as to give buyers of insur-  
10 ance reasonable opportunity to compare the cost of insuring  
11 with various insurers.

12 (2) Any policy of insurance described in this section  
13 shall contain a provision, in accordance with regulations  
14 of the Secretary, specifying the periods within which claims  
15 may be filed and actions against the insurer may be brought.

16 (d) (1) No insurer may issue or offer to issue any  
17 policy which he represents is a qualifying no-fault policy  
18 unless such policy meets the requirements of subsection (a)  
19 (and of subsection (b) if the insured elects the optional cov-  
20 erage under such subsection), is consistent with the require-  
21 ments of subsection (c), and includes all applicable standard  
22 uniform policy provisions under section 5 (c) (1).

23 (2) (A) Any insurer who violates paragraph (1) shall  
24 be assessed a civil penalty of not to exceed \$5,000 for each

1 policy which the insurer issues or offers to issue in violation  
2 of such paragraph.

3 (B) Any insurer who willfully violates paragraph (1)  
4 shall be fined not more than \$5,000, or imprisoned not more  
5 than one year, or both.

6 (e) (1) Subject to paragraph (2) —

7 (A) An application for a qualifying no-fault policy  
8 covering a motor vehicle in a State may not be rejected  
9 by an insurer authorized to issue such a policy in such  
10 State unless—

11 (i) the principal operator of such vehicle does  
12 not have a license which permits him to operate  
13 such vehicle, or

14 (ii) the application is not accompanied by a  
15 reasonable portion of the premium (as determined  
16 under regulations of the Secretary).

17 (B) A qualifying no-fault policy once issued may  
18 not be canceled or refused renewal by an insurer except  
19 for—

20 (i) suspension or revocation of the license of  
21 the principal operator to operate a motor vehicle, or

22 (ii) failure to pay the premium for such policy  
23 after reasonable demand therefor.

24 In any case of cancellation or refusal to renew under

1 clause (ii), 20 days' written notice shall be given to  
2 the insured.

3 (2) An insurer may reject or refuse to accept additional  
4 applications for, or policies of, insurance which meet the  
5 requirements of subsection (a) of this section if the domicil-  
6 iary State insurance supervisory authority of such insurer  
7 deems in writing that the solvency of such insurer would be  
8 impaired by the writing of additional policies of such insur-  
9 ance.

10 (3) Whoever knowingly violates, or conspires to vio-  
11 late, the provisions of paragraph (1) of this subsection shall  
12 be assessed a civil penalty of not to exceed \$1,000 for each  
13 separate violation. Each violation of subsection (a) with  
14 respect to any policyholder or applicant for insurance shall  
15 constitute a separate violation.

16 UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

17 SEC. 6. (a) The Secretary shall, after consultation with  
18 insurers and State insurance supervisory authorities,  
19 promulgate a common, uniform statistical plan for the allo-  
20 cation and compilation of claims and loss experience data  
21 for each coverage under section 5 of this Act, and upon  
22 promulgation, such plan shall be followed by every insurer  
23 writing qualifying no-fault policies, and by every rating or  
24 advisory organization or statistical agent used by any such

1 insurer to gather, compile, or report claims and loss experi-  
2 ence data.

3 (b) Such statistical plan shall contain data pertaining  
4 to the claims and loss experience for the classes of risk in  
5 each rating territory within each coverage under section 5  
6 of this Act. Such statistical plan shall not contain data  
7 pertaining to expenses for adjusting losses, underwriting  
8 expenses, general administration expenses, or any other ex-  
9 pense experience for any class of risk in each rating territory  
10 within the coverages under section 5 of this Act. In carrying  
11 out the provisions of this section, no insurer, rating, or  
12 advisory organization, or statistical agent, or any other as-  
13 sociation of insurers, may pool, or in any manner combine,  
14 any such expenses or expense experience, or otherwise act  
15 in concert with respect thereto.

16 (c) Every insurer writing policies of insurance which  
17 meet the requirements of section 5 of this Act, and every  
18 rating or advisory organization or statistical agent used  
19 by such insurer to gather or compile claims and loss experi-  
20 ence data, shall report such data in accordance with the pro-  
21 visions of the statistical plan required by this section at such  
22 times and in such manner as the Secretary shall by regula-  
23 tions prescribe.

24 (d) The Secretary shall prescribe regulations which  
25 shall require a minimal number of standard uniform—

1           (1) policy provisions for each coverage under sec-  
2           tion 5 of this Act; and

3           (2) classes of risk and rating territories for each  
4           coverage under section 5 of this Act;

5   in order to accomplish the purposes of the statistical plan  
6   required by this section.

7       (e) Every insurer writing qualifying no-fault policies  
8   shall provide the Secretary with the actual rate or premium  
9   being charged for each class of risk in each rating territory  
10   within each coverage under section 5 of this Act at such  
11   times and in such manner as the Secretary shall by rules and  
12   regulations prescribe.

13       (f) The Secretary may, after consultation with the in-  
14   surers and State insurance supervisory authorities, appoint a  
15   statistical agent or agents, to receive, gather, compile, re-  
16   port, and analyze the claims and loss experience data, and  
17   actual rates or premiums, specified in subsections (c) and  
18   (e) of this section.

19       (g) From time to time, but not less often than semi-  
20   annually, the Secretary shall analyze and freely and fully  
21   make available to the State insurance supervisory authorities  
22   and to the general public, with respect to every insurer  
23   writing qualifying no-fault policies, a comparison of such  
24   insurer's indicated rate based solely upon the claims and  
25   loss experience data for each class of risk in each rating



1 territory within each coverage under section 5 with the  
2 actual rate or premiums being charge by the insurer for such  
3 class of risk in each rating territory within such coverage.  
4 The claims and loss experience data, and actual rates or  
5 premiums specified in subsections (c) and (e) of this sec-  
6 tion shall be made available to the general public at such  
7 times and in such manner as the Secretary shall by regu-  
8 lation prescribe.

9 (h) Any insurer writing qualifying no-fault policies, or  
10 any rating or advisory organization or statistical agent used  
11 by any such insurer to gather, compile or report claims and  
12 loss experience data with respect to policies meeting the  
13 requirements of section 5, who fails to:

14 (1) follow the statistical plan promulgated in ac-  
15 cordance with subsections (a) and (b) of this section,  
16 or

17 (2) observe the prohibition in subsection (b) of  
18 this section against pooling, or in any manner combin-  
19 ing expense experience, or

20 (3) report to the Secretary, or his statistical agent  
21 or agents, the claims and loss experience data as re-  
22 quired in subsections (c) and (f) of this section, or

23 (4) follow the standard uniform classes of risk and  
24 rating territories prescribed by the Secretary as required  
25 in subsection (d) of this section, or

(5) provide the Secretary, or his statistical agent or agents, with the actual rate or premium being charged for each class of risk in each rating territory within such coverage as required in subsections (e) and (f) of this section,

shall be assessed a civil penalty of not to exceed \$5,000 for each violation.

#### ASSIGNED CLAIMS PLAN

SEC. 7. (a) (1) The Secretary shall, after consultation with insurers and State insurance supervisory authorities, organize an assigned claims bureau and assigned claims plan in each State. Upon organization, each such bureau and plan shall be maintained, subject to regulation by the applicable State insurance supervisory authority, by the insurers writing qualifying no-fault policies in such State if (and for so long as) the Secretary is satisfied that all such insurers are required under State law to participate and that no such insurer may withdraw without the consent of the State.

(2) In any case in which an assigned claims bureau and assigned claims plan in any State is not maintained in a manner considered by the Secretary to be consistent with the provisions of this Act, the Secretary shall maintain such bureau and plan.

(3) The Secretary shall prescribe regulations which

1 shall set forth the extent to which, for purposes of this  
2 section—

3 (A) a self-insurer shall be treated as an insurer, and

4 (B) benefits which a self-insurer is obligated to pay  
5 shall be treated as insurance benefits under a qualifying  
6 no-fault policy.

7 (b) The costs incurred in the operation of each assigned  
8 claims bureau and assigned claims plan shall be assessed  
9 against insurers in each State by the applicable State insur-  
10 ance supervisory authority (or by the Secretary during any  
11 period during which such bureau and plan are maintained by  
12 him under subsection (a) (2) ) according to regulations of  
13 such State authority (or of the Secretary if the bureau and  
14 plan are maintained by him) that assure fair allocations  
15 among such insurers writing qualifying policies in the State,  
16 on a basis reasonably related to the volume of insurance writ-  
17 ten under qualifying no-fault policies.

18 (c) (1) No insurer may write any qualifying no-fault  
19 policy unless the insurer participates in the assigned claims  
20 bureau and assigned claims plan in each State in which such  
21 insurer writes such policies.

22 (2) An insurer who violates paragraph (1) of this sub-  
23 section shall be assessed a civil penalty of \$5,000 for each  
24 policy he issues in violation of such paragraph.

25 (d) Except as provided in subsection (e) of this sec-

tion, each person sustaining injury or death (or his legal representative) may obtain the insurance benefits described in section 5 (a) of this Act through the assigned claims bureau and assigned claims plan in the State in which such person resides if—

(1) no insurance benefits under qualifying no-fault policies are applicable to the injury or death; or

(2) no such insurance benefits applicable to the injury or death can be identified; or

(3) the only identifiable insurance benefits under qualifying no-fault policies applicable to the injury or death will not be paid in full because of financial inability of one or more insurers to fulfill their obligations.

(e) A person shall be disqualified from receiving benefits through any assigned claims bureau and assigned claims plan established pursuant to this section if—

(1) such person is disqualified under section 5 (a)

(2) (B) of this Act from receiving the insurance benefits under section 5 (a) of this Act, or

(2) such person was—

(A) the owner or registrant of an uninsured motor vehicle at the time of its involvement in the accident out of which such person's injury arose, or

(B) the operator of such a vehicle at such time

1           with reason to believe that such vehicle was an un-  
2           insured motor vehicle.

3           (f) A claim or claims arising from injury or death to  
4           one person sustained in one accident and brought through  
5           the applicable assigned claims plan shall be assigned to  
6           one insurer, or to the applicable assigned claims bureau,  
7           which after such assignment shall have the same rights and  
8           obligations as it would have had had it issued a qualifying  
9           no-fault policy (in such form as the Secretary by regulation  
10          prescribes) applicable to such injury or death.

11          (g) The assignment of claims shall be made according  
12          to regulations of the State supervisory authority (or the  
13          Secretary if the bureau and plan are maintained by him under  
14          subsection (a) (2) ) that assure fair allocation of the burden  
15          of assigned claims among insurers doing business in the par-  
16          ticular State on a basis reasonably related to the volume of  
17          insurance written under section 5 (a) of this Act.

18          (h) A person or his legal representative claiming  
19          through an assigned claims plan shall notify the applicable  
20          bureau of his claim within the period prescribed under sec-  
21          tion 5 (c) (2) (A) for filing a claim for insurance benefits  
22          under section 5 (a) . The bureau shall promptly assign the  
23          claim and notify the claimant of the identity and address of  
24          the insurer to which the claim is assigned, or of the bureau  
25          if the claim is assigned to it. No action by the claimant



1 against the insurer to which his claim is assigned, or against  
2 the bureau if the claim is assigned to it, shall be commenced  
3 later than sixty days after receipt of notice of the assignment  
4 or after the expiration of the period prescribed in section 5  
5 (c) (2) (A) for commencing an action against an insurer,  
6 whichever is later.

7 (i) All reasonable and necessary costs incurred in the  
8 handling and disposition of assigned claims, including amount  
9 paid pursuant to assessments under subsection (b) of this  
10 section, may be considered in making or regulating rates  
11 for the insurance under section 5 (a) of this Act, but  
12 if such costs are considered in the rates or premiums for  
13 such insurance, the pure loss portion of such costs shall be  
14 reported separately under the uniform statistical plan pro-  
15 vided for by section 6 of this Act, and that portion of the  
16 actual rate or premium being charged for such insurance  
17 attributable to the entire amount of such costs incurred in the  
18 handling and disposition of assigned claims shall be reported  
19 separately under subsection (e) of section 6 of this Act.

20 (j) An insurer who makes an assigned claims payment  
21 shall be subrogated to any rights the person to whom the  
22 payment was made may have had against the owner or op-  
23 erator of any uninsured motor vehicle involved in the acci-  
24 dent out of which the claim arose.

## 24

## 1 CLAIMANT'S ATTORNEY'S FEES

2 SEC. 8. Within the discretion of the court, a person  
3 making claim under an insurance policy which meets the  
4 requirements of section 5 may be allowed an award of a  
5 reasonable sum for attorney's fee and all reasonable costs  
6 of suit in any case in which the insurer denies all or part of  
7 a claim for benefits under such policy.

## 8 FRAUDULENT OR EXCESSIVE CLAIMS

9 SEC. 9. Within the discretion of the court, an insurer  
10 or self-insurer may be allowed an award of a reasonable  
11 sum as attorney's fee and all reasonable costs of suit for  
12 its defense against a person making claim against such  
13 insurer or self-insurer under any provision of an insurance  
14 policy which meets the requirements of section 5, where  
15 such claim was fraudulent or so excessive as to have no  
16 reasonable foundation, and such attorney's fee and all such  
17 reasonable costs of suit so awarded may be treated as an  
18 offset against any benefits due or to become due to such  
19 person.

## 20 ADMINISTRATION

21 SEC. 10. In order to carry out the provisions and fulfill  
22 the purpose of this Act, the Secretary shall—

23 (1) consult with representatives of State agencies  
24 charged with the regulation of the business of insurance,  
25 representatives of the private insurance business, and

## 25

1 such other persons, organizations, and agencies of the  
2 Federal, State, or local governments as he deems neces-  
3 sary; and

4 (2) make, promulgate, amend, and repeal such  
5 regulations as he deems necessary.

## EFFECTIVE DATE

7 SEC. 11. (a) Except as provided in subsection (b), this  
8 Act shall take effect one year after its enactment.

9 (b) Sections 3, 5 (e), and 7 (d) shall take effect on  
10 the first day of the eighteenth calendar month which begins  
11 after the date of enactment of this Act. Section 4 shall apply  
12 with respect to accidents occurring on or after the first day of  
13 such eighteenth calendar month.

[H.R. 3968, 92d Cong., 1st sess., introduced by Mr. Halpern on February 9, 1971;  
 H.R. 5220, 92d Cong., 1st sess., introduced by Mr. Halpern (for himself, Mr.  
 Addabbo, Mr. Badillo, Mr. Harrington, Mr. Mikva, Mr. Aspin, and Mr. Roybal)  
 on March 1, 1971;  
 H.R. 5460, 92d Cong., 1st sess., introduced by Mr. Halpern (for himself and  
 Mr. Clark) on March 3, 1971,  
 are identical as follows:]

## A BILL

To regulate interstate commerce by requiring certain insurance  
 as a condition precedent to using the public streets, roads,  
 and highways, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

### 3 SHORT TITLE

4 SECTION 1. That this Act may be cited as the "Uniform  
 5 Motor Vehicle Insurance Act".

### 6 DECLARATION OF PURPOSE

7 SEC. 2. The Congress finds that—

8 (1) The great number of motor vehicles operated  
 9 within the channels of interstate commerce upon the  
 10 public streets, roads and highways of the States;

I—O

1           (2) The substantial amount of injury and death  
2       resulting therefrom;

3           (3) The insufficient, unfair distribution and untimely  
4       availability of monies under the present motor vehicle  
5       liability insurance system for the adequate rehabilitation  
6       and compensation of accident victims;

7           (4) The absence of uniform and sufficient requirements for—  
8

9           (A) Insurance among the States as a condition  
10       to using the public streets, roads, and highways;  
11

12          (B) Guaranteeing the continued availability  
13       of motor vehicle insurance supplied by private enterprise; and  
14

15          (C) Meaningful price information to promote  
16       rational buying decisions and thus stimulate  
17       beneficial competition; and

18          (5) The failure to promote the general welfare  
19       by not recognizing sufficiently the plight of motor vehicle  
20       accident victims while promoting the national policy  
21       of accelerating the construction of the Federal-Aid Highway  
22       Systems;

23       obstruct the free flow of such commerce by increasing unnecessarily  
24       the hazards of travel within such channels and otherwise  
25       affecting such commerce.

1       It is the purpose of this Act to provide for the general  
2 welfare by requiring a system of motor vehicle insurance  
3 which will be uniform among the States, which will guar-  
4 antee the continued availability of such insurance and mean-  
5 ingful price information; and which will provide sufficient,  
6 fair, and prompt payment for rehabilitation and losses due to  
7 injury and death arising out of the operation and use of  
8 motor vehicles within the channels of interstate commerce,  
9 and otherwise affecting such commerce.

10                               DEFINITIONS

11       SEC. 3. As used in this Act—

12       (1) The term “motor vehicle” means any vehicle of a  
13 kind required to be registered under the National Traffic  
14 and Motor Vehicle Safety Act of 1966, as amended.

15       (2) (A) The term “insured motor vehicle” means a  
16 motor vehicle insured under a policy of insurance which  
17 meets the requirements of section 5 of this Act.

18       (2) (B) The term “uninsured motor vehicle” means a  
19 motor vehicle with respect to which insurance provided  
20 under section 5 of this Act is not applicable at the time of  
21 the accident, or with respect to which the insurer nominally  
22 providing such insurance denies coverage, or is financially  
23 unable to fulfill its obligation.

24       (3) The term “owner” means a person who holds the  
25 legal title to a motor vehicle under the National Traffic and



1 Motor Vehicle Safety Act of 1966, as amended, or in the  
2 event a motor vehicle is the subject of a security agreement  
3 or lease with option to purchase with the debtor or lessee  
4 having the right to possession, then the debtor or lessee shall  
5 be deemed the owner for the purpose of this Act.

6 (4) The term "person" means any individual, partner-  
7 ship, corporation, association, trust, syndicate, or other entity.

8 (5) "Operation or use of a motor vehicle" includes load-  
9 ing or unloading the vehicle, but does not include conduct  
10 within the course of a business of repairing, serving or other-  
11 wise maintaining vehicles unless the conduct occurs outside  
12 the business premises.

13 (6) The term "injury" means any bodily injury, sick-  
14 ness or disease (including death at any time resulting there-  
15 from) arising out of the operation or use of a motor vehicle.

16 (7) The term "catastrophic harm" means a bodily in-  
17 jury (including death at any time resulting therefrom)  
18 which results in a permanent partial or total loss of, or loss  
19 of use of, a bodily member, or a bodily function: *Provided,*  
20 *however,* That such permanent partial or total loss, or loss of  
21 use, need not affect earnings or earning power. The term  
22 "catastrophic harm" includes permanent disfigurement.

23 (8) The term "economic loss" means in the case of any  
24 injury or death:

25 (A) All expenses reasonably and necessarily in-

## 5

1       curred for medical, hospital, surgical, professional nurs-  
2       ing, dental, ambulance, and prosthetic services;

3       (B) All expenses reasonably and necessarily in-  
4       curred for physical and occupational therapy and re-  
5       habilitation;

6       (C) The amount which would have been earned  
7       during the 30 months immediately following such injury  
8       or death but for such injury or death could not be earned:  
9       Except, That, in the case of injury, such amount shall  
10      not exceed \$1,000 a month, and, in the case of death,  
11      such amount shall not exceed \$30,000;

12      (D) All other expenses reasonably and necessarily  
13      incurred as a result of such injury.

14      (9) The term "net economic loss" means, in the case  
15      of any injury or death, "economic loss" reduced (but not  
16      below zero) by the amount of:

17      (A) Taxes which would have been payable on the  
18      amount which would have been earned but for such  
19      injury or death; and

20      (B) Any benefit or payment received, or entitled  
21      to be received, for losses resulting from such injury or  
22      death under any provision of law or any insurance or  
23      other source of benefits: Except, benefit or payment  
24      received, or entitled to be received—

(i) in discharge of familial obligations of support;

(ii) by way of succession at death;

(iii) as proceeds of life insurance;

(iv) as gratuities, or

(v) as proceeds of any contract, policy of disability, health and accident, or other insurance or other source of benefits containing an explicit provision making its benefits supplemental to those in accordance with the provisions of section 5 (a) of this Act, or making the benefits under section 5 (a) deductible from the benefits under such contract, policy or other insurance or source.

(I) If any contract, policy of disability, health and accident, or other insurance or other source of benefits does not provide that its benefits shall be supplemental to those under section 5 (a) of this Act, or that the benefits under said section 5 (a) shall be deducted from its benefits, economic loss shall be reduced by the amount of any benefit or payment received, or entitled to be received, from such contract, policy or other insurance or source.

(10) The term "without regard to fault" means irrespective of fault as a cause of any injury or death, and

1 without application of the principle of liability based on  
2 negligence.

3 (11) The term "Secretary" means the Secretary of  
4 Transportation.

5 (12) The term "State" means each of the several  
6 States of the United States, the District of Columbia, the  
7 Commonwealth of Puerto Rico, Guam, the Virgin Islands,  
8 the Canal Zone, and American Samoa.

9 CONDITIONS OF OPERATION: REGISTRATION AND FEES

10 SEC. 4. (a) After the effective date of this section, no  
11 person shall register a motor vehicle under the National  
12 Traffic and Motor Vehicle Safety Act of 1966, as amended,  
13 nor shall any person knowingly operate or use a motor  
14 vehicle upon the public streets, roads and highways of any  
15 State at any time unless—

16 (1) Such motor vehicle is insured under a policy of  
17 insurance which meets the requirements of section 5 of this  
18 Act, pursuant to such rules and regulation (including those  
19 determining the manner and term of proof of such insurance)  
20 as the Secretary shall lawfully prescribe.

21 (A) The requirements of this section may be satisfied  
22 by any person other than an individual by providing a  
23 surety bond, proof of qualifications as a self-insurer, or other  
24 securities affording security substantially equivalent to that

1 afforded under section 5 of this Act, as determined and  
2 approved by the Secretary.

3 (b) No State shall require the purchase or acquisition  
4 of insurance or any other security as a condition to the  
5 operation or use of any motor vehicle upon the public streets,  
6 roads and highways of such State.

7 (c) The provisions of this section shall take effect one  
8 year and six months after the date of enactment of this Act.

9 (d) Any person who knowingly violates the provisions  
10 of subsection (a) of this section shall be guilty of a mis-  
11 demeanor and upon conviction thereof, shall be punished  
12 by a fine not to exceed \$1,000, or imprisonment for a  
13 period of not to exceed one year or both.

14 INSURANCE REQUIREMENTS

15 SEC. 5. In order to meet the requirements of section 4  
16 (a) and (b) of this Act, an insurance policy shall provide—

17 (a) Net economic loss benefits for injuries and death  
18 as follows:

19 (1) Except as otherwise provided in paragraph (3),  
20 the insurer shall pay, without regard to fault, to any person,  
21 including the owner, operator, or user of an insured motor  
22 vehicle, an amount equal to the net economic loss sustained  
23 by such person arising out of the operation or use of such  
24 motor vehicle.

25 (2) Except as otherwise provided in paragraph (3),



1 the insurer shall pay, without regard to fault, to the legal  
2 representative of any person, including the owner, operator,  
3 or user of an insured motor vehicle, whose death is the result  
4 of any injury arising out of the operation or use of such motor  
5 vehicle, for the benefit of the surviving spouse and any de-  
6 pendent (as defined in section 152 of the Internal Revenue  
7 Code of 1954) of such person, an amount equal to the net  
8 economic loss sustained by such spouse and dependent as a  
9 result of the death of such person.

10 (3) No payment shall be made for net economic loss  
11 sustained by—

12 (A) The occupants of another motor vehicle; or

13 (B) The operator or user of a motor vehicle while  
14 committing a felony, or operating or using with the  
15 specific intent of causing injury or damage, or operating  
16 or using a motor vehicle as a converter without a good  
17 faith belief that he is legally entitled to operate or use  
18 such vehicle.

19 (4) The operator or user of an insured motor vehicle  
20 shall be liable, without regard to fault, to reimburse the  
21 insurer of any motor vehicle for benefits payable to, or on  
22 behalf of, any person other than the operator or user de-  
23 scribed in paragraphs (A) and (B) of section 5 (a) (4)



1 for net economic loss arising out of the operation or use of  
2 such motor vehicle while—

3 (A) the operator or user was intoxicated, as de-  
4 fined in the Highway and Motor Vehicle Safety Act  
5 of 1966, as amended;

6 (B) the operator's or user's ability to operate or  
7 use such motor vehicle was impaired by the use of  
8 narcotic drugs, as defined in section 4731 of the Internal  
9 Revenue Code of 1954 (68A Stat. 557), including  
10 depressant and stimulant drugs, as defined in subsection  
11 (v) of section 201 of the Federal Food, Drug, and  
12 Cosmetic Act (79 Stat. 234, as amended) ;

13 (C) the operator or user committing or attempting  
14 to commit a felony; or

15 (D) the operator or user was operating or using  
16 such motor vehicle—

17 (i) with the specific intent of causing injury  
18 or damage; or

19 (ii) as a converter without a good faith belief  
20 that he was legally entitled to operate or use such  
21 vehicle.

22 (5) Payments for net economic loss shall be made as  
23 such loss is incurred except in the case of death: *Provided*,  
24 That amounts of such loss unpaid 30 days after the insurer has  
25 received reasonable proof of the fact and amount of loss

1 realized, and demand for payment thereof, shall thereafter  
2 bear interest at the rate of 20 percent per annum.

3 (6) A claim for net economic loss based upon injury  
4 or death to a person who is not an occupant of any motor  
5 vehicle involved in an accident may be made against the in-  
6 surer of any involved vehicle: *Provided*, That the insurer  
7 against whom the claim is asserted shall process and pay the  
8 claim as if wholly responsible: *Provided, however*, That such  
9 insurer is thereafter entitled to recover from the insurers of  
10 all other involved vehicles proportionate contribution for the  
11 benefits paid and the costs of processing the claim.

12 (7) Net economic loss sustained by any occupant, op-  
13 erator, or user of a commercial motor vehicle shall be paid  
14 by the insurer of such commercial motor vehicle.

15 (8) (A) When one or more of the motor vehicles in-  
16 volved in an accident is larger than an ordinary passenger  
17 automobile, the insurer of the larger vehicle shall be respon-  
18 sible for a percentage of any net economic loss paid to occu-  
19 pants involved in the accident.

20 (8) (B) The Secretary shall classify, by rules and reg-  
21 ulations in conformity with the Administrative Procedure  
22 Act, as amended, all motor vehicles larger than ordinary  
23 passenger automobiles into reasonable categories, and shall  
24 assign to each category a percentage of responsibility for  
25 net economic loss sustained by occupants of other vehicles;

1 *Provided*, That such classifications and percentages of re-  
2 sponsibility shall be based upon the increased severity of  
3 injury, caused by large vehicles in comparison to ordinary  
4 passenger automobiles: *Provided further*, That if a larger  
5 vehicle is liable for more than 70 percent of the net economic  
6 loss, such insurer may control the processing of any claims  
7 for such loss and be entitled to obtain contribution from in-  
8 surers liable for the remainder of the benefits.

9 (9) (A) No owner, operator, or user of an insured  
10 motor vehicle shall be liable for economic loss arising out  
11 of the operation or use of such vehicle, to any person to  
12 whom, or for the benefit of whom, insurance benefits are pay-  
13 able under the provisions of paragraphs (1) and (2) of  
14 subsection (a) of this section, or to whom payment is pro-  
15 hibited under the provisions of paragraph (3) of subsection  
16 (a) of this section.

17 (9) (B) The owner, operator, or user of an insured  
18 motor vehicle shall be liable for damages for catastrophic  
19 harm, arising out of the negligent operation or use of such  
20 vehicle, only to the extent that such damages exceed eco-  
21 nomic loss.

22 (b) Optional catastrophic harm insurance in excess of  
23 economic loss as follows—

24 (1) At the option of the insured, the insurer shall offer  
25 a provision for legal liability for catastrophic harm, arising

1 out of the negligent operation or use of a motor vehicle, to a  
2 limit of, at least, \$50,000 for any one person, and \$300,000  
3 for all persons in any one accident; and, at the option of the  
4 insured, the insurer shall offer a provision undertaking to pay  
5 to the insured all sums, not in excess of the limits of liability  
6 provided by the insured's liability insurance, which such in-  
7 sured is legally entitled to recover as damages for catastrophic  
8 harm arising out of operation or use of an uninsured motor  
9 vehicle.

10 (c) Any such policy of insurance described in this sec-  
11 tion may contain—

12 (1) additional coverages and benefits with respect  
13 to any injury, death, property damage, or any other loss  
14 from motor vehicle accidents;

15 (2) terms, conditions and exclusions;  
16 consistent with the required provisions of such policy and  
17 approved by the Secretary, who shall only approve terms,  
18 conditions, exclusions, coverages and benefits which are fair  
19 and equitable, and which limit the variety of coverages avail-  
20 able so as to give buyers of insurance reasonable oppor-  
21 tunity to compare the cost of insuring with various insurers.

22 (d) An application for a policy of insurance described in  
23 subsection (a) of this section may not be rejected by an in-  
24 surer, nor shall such policy of insurance once issued, be can-  
25 celed or refused renewal, by an insurer except for (1) sus-

1 pension or revocation of the license of an owner or principal  
2 operator to operate a motor vehicle, or (2) failure to pay the  
3 premium for such policy after reasonable demand therefor;  
4 *Provided*, That, 20 days written notice is given to the insured  
5 with respect to paragraphs (1) and (2) of this subsection.

#### 6 UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

7 SEC. 6. (a) The Secretary shall, after consultation with  
8 the insurers and State insurance supervisory authorities,  
9 promulgate a common, uniform statistical plan for the allo-  
10 cation and compilation of loss experience data for each cov-  
11 erage under section 5 of this Act, and upon promulgation,  
12 such plan shall be followed by every insurer writing policies  
13 of insurance which meet the requirements of section 5 of  
14 this Act, and by every rating or advisory organization or  
15 statistical agent named by any such insurer to gather, com-  
16 pile, or report loss experience data.

17 (b) Such statistical plan shall contain data pertaining  
18 to the pure loss experience for the classes of risk within each  
19 coverage under section 5 of this Act: *Provided, however*,  
20 That such plan shall not contain data pertaining to loss ad-  
21 justment expenses, underwriting expenses, general admin-  
22 istration expenses, or other expense experience for any class  
23 of risk within the coverage under section 5 of this Act:  
24 *Provided further*, That in carrying out the provisions of  
25 this section, no insurer, rating, or advisory organization, or



1 statistical agent, or any other association of insurers, shall  
2 pool, or in any manner combine, any such expenses or ex-  
3 pense experience, or otherwise act in concert with respect  
4 thereto.

5 (c) Every insurer writing policies of insurance which  
6 meet the requirements of section 5 of this Act, and every  
7 rating or advisory organization or statistical agent named by  
8 such insurer to gather or compile loss experience data, shall  
9 report such data in accordance with the provisions of the  
10 statistical plan required by this section at such times and  
11 in such manner as the Secretary shall, by rules and regula-  
12 tions, lawfully prescribe.

13 (d) The Secretary may require standard uniform and  
14 standard minimal—

15 (1) policy provisions for the coverages under section  
16 5 of this Act;

17 (2) classes of risk within each coverage under sec-  
18 tion 5 of this Act;

19 to the extent that he deems it necessary to accomplish the  
20 purposes of the statistical plan required by this section.

21 (e) Every insurer writing policies of insurance which  
22 meet the requirements of section 5 of this Act, shall provide  
23 the Secretary with the actual rate or premium being charged  
24 for each class of risk within each coverage under section 5



1 of this Act at such times and in such manner as the Secre-  
2 tary shall by rules and regulations prescribe.

3 (f) From time to time, but not less than semi-annually,  
4 the Secretary shall analyze and freely and fully make avail-  
5 able to the general public, with respect to every insurer  
6 writing policies of insurance which meet the requirements  
7 of sesction 5 of this Act, a comparison of such insurer's indi-  
8 cated rate based upon the loss experience data for each class  
9 of risk within each coverage with the actual rate or pre-  
10 mium being charged by the insurer for such class or risk  
11 within such coverage.

#### 12 ASSIGNED CLAIMS PLAN

#### 13 Organization and Maintenance

14 SEC. 7. (a) The Secretary shall, after consultation with  
15 the insurers and State insurance supervisory authorities,  
16 organize an assigned claims bureau and assigned claims  
17 plan in each State. Upon organization, each such bureau and  
18 plan shall be maintained, subject to regulation by the appli-  
19 cable State insurance supervisory authority, by the insurers  
20 authorized to write policies of insurance under section 5 of this  
21 Act in such State. In default of the continued maintenance of  
22 an assigned claims bureau and assigned claims plan in any  
23 State in a manner considered by the Secretary to be con-  
24 sistent with the provisions of this Act, the Secretary shall  
25 maintain such bureau and plan.

### Costs of Operation

(b) The costs incurred in the operation of each assigned claims bureau and assigned claims plan shall be assessed against insurers in each State by the applicable State insurance supervisory authority according to rules and regulations that assure fair allocations among such insurers writing policies of insurance under section 5 of this Act in the State, on a basis reasonably related to the volume of insurance under subsection (a) of section 5 of this Act.

### Insurers Required to Participate

(c) Every insurer writing policies of insurance under section 5 of this Act is required to participate in the assigned claims bureau and assigned claims plan in each and every State in which such insurer is authorized to write such policies of insurance.

### Persons Entitled to Claim Through Assigned Claims Plan;

#### Benefits to Which Entitled

(d) Each person suffering loss because of injury or death arising out of the ownership, operation or use of a motor vehicle may obtain the insurance benefits under subsection (a) of section 5 of this Act through the assigned claims bureau and assigned claims plan in the State in which such person resides if—

(1) no such insurance benefits are applicable to the injury or death; or

(2) no such insurance benefits applicable to the injury or death can be identified; or

(3) the only identifiable insurance benefits under subsection (a) of section 5 of this Act applicable to the injury or death are, because of financial inability of one or more insurers to fulfill their obligations, inadequate to provide such benefits.

#### Claims Assigned to One Insurer or the Bureau

(e) A claim or claims arising from injury or death to one person sustained in one accident and brought through the applicable assigned claims plan shall be assigned to one insurer, or to the applicable assigned claims bureau, which after such assignment shall have rights and obligations as if having issued a policy of insurance containing the benefits under subsection (a) of section 5 of this Act.

#### Principle of Assignment

(f) The assignment of claims shall be made according to rules and regulations that assure fair allocation of the burden of assigned claims among insurers doing business in the particular State or a basis reasonably related to the volume of insurance written under subsection (a) of section 5 of this Act.

#### Notification of Bureau by Claimant for Assignment of His Claim

(g) A person or his legal representative claiming

1 through an assigned claims plan shall notify the applicable  
2 bureau of his claim within the time that would have been  
3 allowed for filing an action for the insurance benefits under  
4 subsection (a) of section 5 of this Act had there been in  
5 effect identifiable coverage applicable to the claim. The  
6 bureau shall promptly assign the claim and notify the claim-  
7 ant of the identity and address of the insurer to which the  
8 claim is assigned, or of the bureau if the claim is assigned  
9 to it. No action by the claimant against the insurer to which  
10 his claim is assigned, or against the bureau, if the claim  
11 is assigned to it, shall be commenced later than 60 days after  
12 receipt of notice of the assignment or the last date on which  
13 the action might have been commenced had it been against  
14 the insurer of identifiable coverage applicable to the claim,  
15 whichever is later.

#### 16 Costs of Assigned Claims Plan

17 (h) All reasonable and necessary costs incurred in  
18 the handling and disposition of assigned claims, including  
19 amounts paid pursuant to assessments under subsection (b)  
20 of this section may be considered in making the regulating  
21 rates for the insurance under subsection (a) of section 5 of  
22 this Act: *Provided, however,* That if such costs are considered  
23 in the rates or premiums for such insurance, the pure loss  
24 portion of such costs shall be reported separately under the  
25 uniform statistical plan provided for by section 6 of this Act,

1 and that portion of the actual rate or premium being charged  
2 for such insurance attributable to the entire amount of such  
3 costs incurred in the handling and disposition of assigned  
4 claims shall be reported separately under subsection (e) of  
5 section 6 of this Act.

6 (i) An insurer who makes an assigned claims payment  
7 shall be reimbursed, without regard to fault, by the owner  
8 of a motor vehicle which was not insured under section 5 (a)  
9 of this Act at the time of the accident out of which such as-  
10 signed claim arose.

11 INSURERS' FRAUDULENT OR ARBITRARY DENIAL OF CLAIMS

12 AND FRAUDULENT OR EXCESSIVE CLAIMS

13 SEC. 8. (a) Within the discretion of any court, a person  
14 making claim under a policy of insurance which meets the  
15 requirements of section 5 of this Act may be allowed an  
16 award of a reasonable sum for attorney's fee where the in-  
17 surer's denial of all or part of the claim was fraudulent or so  
18 arbitrary as to have no reasonable foundation.

19 FRAUDULENT OR EXCESSIVE CLAIMS

20 (b) Within the discretion of any court, an insurer or  
21 any person who qualifies as a self-insurer under paragraph  
22 (A) of section 4 (a) (1) may be allowed an award of a  
23 reasonable sum as attorney's fee for its defense against a  
24 person making claim against such insurer or self-insurer  
25 where such claim was fraudulent or so excessive as to have



1 no reasonable foundation, and such attorney's fee so  
2 awarded may be treated as an offset against any benefits due  
3 or to become due to such person.

4 ADMINISTRATION

5 SEC. 9. In order to carry out the provisions of this Act,  
6 the Secretary shall—

7 (a) consult with representatives of State agencies  
8 charged with the regulation of the business of insurance,  
9 representatives of the private insurance business, and  
10 such other persons, organizations, and agencies of the  
11 Federal, State, or local governments as he deems neces-  
12 sary; and

13 (b) lawfully make, promulgate, amend, and repeal  
14 such rules and regulations as he deems necessary.

15 AUTHORIZATION AND APPROPRIATIONS

16 SEC. 10. There are authorized to be appropriated such  
17 sums as may be necessary to carry out the provisions of this  
18 Act, including the organization of assigned claims bureaus  
19 and assigned claims plans in each State.

20 SEPARABILITY CLAUSE

21 SEC. 11. If any provision of this Act is declared uncon-  
22 stitutional, or the applicability thereof to any person or cir-  
23 cumstance is held invalid, the constitutionality of the re-



1 mainder of the Act and the applicability thereof to other  
2 persons and circumstances shall not be affected thereby.

3 EFFECTIVE DATE

4 SEC. 12. This Act shall become effective one year after  
5 the date of enactment.

H.R. 5459, 92d Cong., 1st sess., introduced by Mr. Halpern (for himself and Mr. Clark) on March 3, 1971,  
are identical as follows:]

# A BILL

To promote the greater availability of motor vehicle insurance in interstate commerce under more efficient and beneficial marketing conditions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the “Motor Vehicle Group  
4       Insurance Act”.

## 5 DEFINITIONS

6 SEC. 2. As used in this Act—

(1) The term “insurer” means any enterprise engaged in the business of issuing or reinsuring motor vehicle insurance policies in interstate commerce or engaged in the business of issuing motor vehicle insurance that is reinsured (in whole or in part) in interstate commerce.

1       (2) The term "group insurance" means any plan of  
2 motor vehicle insurance offered or provided to members of  
3 a group not organized solely for the purpose of obtaining  
4 insurance, under the terms of a master policy or operating  
5 agreement between an insurer and the group sponsor, and  
6 incorporating group average rating, guaranteed issue with or  
7 without minimum eligibility requirements, group experience  
8 rating, employer contributions, or any other benefit to the  
9 members as insureds that they may be unable to obtain in  
10 the ordinary channels of insurance marketing on an indi-  
11 vidual basis. The term "group sponsor" means the employer  
12 or other representative entity of an employment based group  
13 or the administrative representative of any other type of  
14 group.

15       (3) The term "interstate commerce" means trade or  
16 commerce among the several States, or between the District  
17 of Columbia or any possession of the United States and any  
18 State or other possession, or within the District of Columbia.

19       (4) The term "State" means any State or possession  
20 of the United States, the District of Columbia, and the Com-  
21 monwealth of Puerto Rico.

22       (5) The term "Attorney General" means the Attorney  
23 General of the United States.

## 1        REMOVING RESTRICTIONS ON GROUP INSURANCE

2        SEC. 3. No State shall—

3            (1) prohibit, inhibit, restrict or condition, by means  
4            of fictitious group statutes or regulations, agency licens-  
5            ing requirements, application of prohibitions of unfair  
6            discrimination, eligibility provisions, or otherwise, the  
7            issuance and marketing of group insurance; or

8            (2) penalize or deny authority to an insurer be-  
9            cause of its engagement or intention to engage in the  
10          marketing and issuance of group insurance.

11          (b) No State or group of insurers operating voluntarily  
12          shall, directly or indirectly, include insureds under a plan of  
13          group insurance in the base used in determining assign-  
14          ments to or assessments upon an insurer under an assigned  
15          risk plan if such plan of group insurance precludes any indi-  
16          vidual underwriting by the insurer and if the group is not  
17          defined to exclude members characterized as being bad risks,  
18          unless the assigned risk plan provides a reasonable system  
19          of credit to the insurer for insureds under the group insurance  
20          plan who would otherwise be eligible for coverage under the  
21          assigned risk plan.

## 22        AUTHORIZATION OF PAYMENTS TO TRUST FUNDS

23        SEC. 5. Section 302 (c) of the Labor Management Re-  
24        lations Act, 1947, is amended by inserting immediately be-

## 4

1 fore the semicolon at the end of Clause (A) of the proviso to  
2 Clause (5) the following: "including group insurance as  
3 defined by the Motor Vehicle Group Insurance Act."

## 4 ENFORCEMENT

5 SEC. 6. (a) Whenever it shall appear to the Attorney  
6 General that any person is engaged or is about to engage in  
7 any acts or practices that constitute or will constitute a vio-  
8 lation of the provisions of this Act, he shall bring an action in  
9 the proper district court of the United States to enjoin such  
10 acts or practices, and upon a proper showing, a permanent  
11 or temporary injunction or restraining order shall be  
12 granted.

13 (b) Nothing in this section shall preclude an insurer or  
14 any other person from instituting legal process to enforce  
15 their rights under this Act or from using the provisions of  
16 this Act as an otherwise valid defense in any relevant legal  
17 action brought against them.

## 18 JURISDICTION

19 SEC. 7. The district courts of the United States shall  
20 have exclusive jurisdiction of violations of this Act and of  
21 all suits brought to enforce it.



DEPARTMENT OF COMMERCE,  
OFFICE OF THE GENERAL COUNSEL,  
Washington, D.C., May 22, 1971.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 3968, a bill to regulate interstate commerce by requiring certain insurance as a condition precedent to using the public streets, roads, and highways, and for other purposes cited as the "Uniform Motor Vehicle Insurance Act".

This bill would prohibit the registration or operation of any motor vehicle not covered by an insurance policy providing for payment of economic loss benefits, without regard to fault, with provision for optional catastrophic coverage. Applications for such policies could not be rejected by an insurer nor could they be cancelled without cause. The Secretary of Transportation would be required to promulgate a common, uniform statistical plan for the allocation and compilation of loss experience data. In addition, the Secretary would be required to organize an assigned claims bureau and assigned claims plan in each state in which all insurers would be required to participate.

The Department of Commerce recommends against enactment of H.R. 3968.

Although we agree with the general concept of no fault insurance, we favor the approach embodied in House Concurrent Resolution 241, which has the support of the Secretary of Transportation, based on an exhaustive study of automobile accident insurance undertaken in accordance with Public Law 90-313. House Concurrent Resolution 241 expresses the sense of the Congress that the states should, in general, continue to regulate automobile accident insurance subject to the congressional admonition that new and updated approaches to insurance and accident compensation must be evolved.

The sense of the Congress embodied in House Concurrent Resolution 241 includes no-fault coverage and provides principles for State legislation. The Secretary of Transportation would analyze action taken by the States; provide them with technical assistance; and report not later than 25 months after adoption of House Concurrent Resolution 241 on progress made by the States in carrying out the intent of Congress as well as on his views regarding the feasibility of attaining a satisfactory and compatible motor vehicle accident compensation system without further Federal legislation.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

WILLIAM N. LETSON,  
*General Counsel.*

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EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., April 22, 1971.

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your requests for reports on the following bills:

House Concurrent Resolution 241: Expressing the sense of the Congress with respect to motor vehicle insurance and an accident compensation system.

H.R. 3968: A bill to regulate interstate commerce by requiring certain insurance as a condition precedent to using the public streets, roads, and highways, and for other purposes.

H.R. 4994: Uniform Motor Vehicle Insurance Act.



We concur with the views expressed by the Secretary of Transportation on April 20, 1971, in testimony before your committee concerning House Concurrent Resolution 241. We would therefore favor the enactment of House Concurrent Resolution 241 and oppose favorable consideration of H.R. 3968 and H.R. 4994.

Sincerely,

WILFRED H. ROMMEL,  
Assistant Director for  
Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., June 7, 1971.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Office of Management and Budget on H.R. 7514, a bill to require no-fault motor vehicle insurance as a condition precedent to using the public streets, roads, and highways, in order to promote and regulate interstate commerce.

In testimony before your committee on April 20, 1971, the Secretary of Transportation recommended enactment of House Concurrent Resolution 241 in lieu of H.R. 7514. We concur with the views expressed in this testimony and also recommend against enactment of H.R. 7514.

Sincerely,

C. WILLIAM FISCHER,  
(For WILFRED H. ROMMEL,  
Assistant Director for Legislative Reference).

Mr. Moss. Mr. Broyhill, do you have any statement at this time?

Mr. BROYHILL. I have no statement at this time.

Mr. Moss. I am very pleased to recognize as our witness for today the Honorable John A. Volpe, Secretary of the Department of Transportation.

**STATEMENT OF HON. JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY CHARLES D. BAKER, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS; AND RICHARD F. WALSH, DEPUTY DIRECTOR, POLICY AND PLANS DEVELOPMENT**

Secretary VOLPE. Thank you, Mr. Chairman and members of the committee. I would like to present to you first my colleagues, Mr. Charles Baker, Assistant Secretary for Policy and International Affairs, on my right. On my left is Dick Walsh, who headed the overall study, and has been a real strong right arm in this whole operation.

I thank the members, Mr. Chairman, for their invitation to be here this morning. May I say that the statement is rather long, and with your permission, I will omit certain parts of it and present only those salient features which I believe would be of most interest. The whole document will be available for the record.

I am very pleased to be here today to discuss the final report of the automobile insurance and compensation study called for in Public Law 90-313. The research findings of our study are largely contained in 23 published reports. No good end would be served, however, by reiterating the problems and disabilities of the existing auto accident reparations system. Moreover, there appears to be a broad and heartening consensus among nearly everyone concerned that the present system is not working well and should be changed.

What I would like to address principally this morning are our recommendations and the factors influencing these recommendations. In particular, I would like to discuss why we feel that the States should retain, at this time, the authority for initiating insurance reform along the lines contained in our recommendations.

First, we believe that there remains much legitimate uncertainty about how far and how fast the public is willing to go in changing the reparations system. It is also clear that there exists genuine concern over the unknown price and cost implications of any major change in the system. We do not claim to have definitive answers to these questions. Rather, we believe we should seek change through action initiated by the States, but consistent with the broad outlines and principles of a system such as that I will describe.

The experience of the States as they move toward reform should make clear the most desirable ultimate configuration of a motor vehicle reparations system.

Nonetheless, because motor vehicle travel is so much an interstate activity, States should attempt to develop similar reparations systems, and some kind of broad advisory national goals or standards are appropriate.

Since we initiated our study, reform in the auto accident reparations system at the State level has clearly moved off dead center and would appear to be achieving some momentum.

#### SUMMARY OF THE RECOMMENDATIONS

We believe that the States should begin promptly to shift to a first-party, no-fault compensation system for automobile accident victims.

We believe that recovery for general or intangible damages should be drastically limited and carefully circumscribed.

We believe that our relevant institutions, both public and private, should be given adequate time to plan for, adapt to and assess the performance of a new system.

We believe that change should take place at the State level, but there should be general national goals or principles toward which the States will be moving.

We believe the States, should be allowed to absorb changes in reasonably predictable amounts and allow them to reverse gears to slow down, or perhaps even speed up, as experience indicates.

Let me describe more specifically the broad outlines of a possible ultimate system which we believe is consistent with the findings and conclusions of our study. The policy limits and deductibles I will use should be recognized for what they are—illustrative.

#### AN ILLUSTRATIVE SYSTEM

We believe that the present system needs change badly, and needs it now. Based on our extensive study, we believe that the most promising avenue for changes which will better serve the driving public is in the direction of a first-party, no-fault system combined with a modification of the rule on general damages. Recognizing that a little observation is worth a great deal of speculation, we think that a system like the one I will now describe shows the most promise.

## COMPULSORY FIRST-PARTY BENEFITS

Every owner of a motor vehicle would be required to carry insurance protecting himself, his family, and every uninsured passenger or pedestrian suffering injury as a result of an accident involving the insured vehicle, for all economic losses they thereby incur, subject to reasonable limits and deductibles. In addition, the insurance should protect the insured and all members of his family who are part of the family household against losses suffered when they are pedestrians or passengers in another vehicle.

## REQUIRED MEDICAL BENEFITS

Full coverage for all medical benefits should be provided with a relatively low permissible deductible per accident, but very high mandatory limits. Any deductible or limit voluntarily assumed by the car owner on behalf of himself and his household would not apply, however, to the medical losses of uninsured pedestrians. Included in covered benefits will be all medical rehabilitation expenses within the limits provided.

## INCOME LOSS PROTECTION

Coverage will have to be afforded for a relatively high percentage of earned income of the injured or deceased auto accident victim. There should be a short permitted waiting period at the option of the insured before the start of benefits and permitted monthly benefit ceiling by the insurer of perhaps \$1,000. High benefits could be made available at the option of the insurer and insured.

The minimum duration of mandatory income loss protection should be finally established only after further investigation and experimentation. Initially, the minimum duration might be set at 3 years, except for victims in approved rehabilitation programs, whose protection would continue as long as necessary. Longer durations should be optionally available from the beginning.

## LOST SERVICE BENEFITS

Minimum coverage for the cost of necessary replacement services for nonemployed persons, such as housewives, could be required up to perhaps \$75 per week, with permitted waiting period for benefits at the option of the insured.

## PROPERTY DAMAGE

Coverage of damages to property, including the insured vehicle, might be required, but with a permissible deductible referable to the vehicle only at the option of the insured of up to a rather high level, perhaps \$1,000 or a third of the value of the car. There would be a permissible limitation of coverage by the insurer of \$10,000 per accident.

## ELIMINATION OF ACTION FOR DAMAGES

No recovery for any loss covered by the applicable required coverage would be permitted in any private action for damages. The insured victim's sole recourse for benefits for wages lost, medical loss,



lost service, funeral expenses and property damage should be limited to the insured required coverage and any additional optional coverage that he has elected to purchase.

#### STATE OR FEDERAL ACTION NOW?

Understandably, given the rather remarkable degree of consensus that a no-fault solution to the auto accident reparations problem is necessary, interest has gravitated to the issue of whether reform should take place at the State level or Federal level. Obviously, good arguments can be mounted on both sides. Federal preemption was one of the alternatives we looked at closely, but was rejected. I would like to review some of the reasons for our doing so.

One reason, of course, was that this administration believes strongly that the functions of government should be performed and the effective decisions of government should be made as close to the people as possible. This is a principle that I personally believe in deeply.

But there are other reasons which transcend political. It seems clear to us, from our study, that the insurance institution, including State regulation of insurance, has been held at fault for intrinsic inadequacies in the reparations system itself. In most instances, the basic problems lie in the inadequacy of reparation for the seriously injured or killed, the overcompensation of the minimally injured and the wasteful administrative costs of the system.

It is unfortunate that insurers, in general, have failed to convey to the public and to their legislative representatives that the auto insurance institution inherited a faulty public policy, a policy that has vainly attempted the impossible task of melding tort liability and indemnity insurance into a workable and efficient reparations system. Too often, insurers who should have devoted themselves to seeking out the optimum reparations system have chosen to assume the role of advocates for whatever cause seemed best suited to enhance or preserve their market positions. Moreover, insurance regulatory officials have, in general, failed to make clear that they are the captives of a reparations system which they did not create and over which they have little authority. Indeed, in only one State is the financial responsibility law (the foundation of the auto reparations system) regulated and administered by the insurance regulator. Of course, any governmentally mandated reparations system must look toward achieving an equitable balance between the interests of those who fund the system, those who are its current or potential beneficiaries, and those who must operate it.

No purpose would be served here by dwelling upon the deficiencies of the fault system. As you know, we have made our judgment condemning that system, and we are at least as vigorous in urging its replacement with a no-fault reparations plan as those who demand an instant Federal solution. As far as we are concerned, the question now is not whether there should be reform, or what that reform should be, but how it should be brought about and by whom.

Some urge immediate Federal enactment of a complete no-fault insurance program contending that reliance on State-by-State action would produce reform only after many years, if at all. We realize that some desirable reforms, for example, the model bill on consumer credit insurance, have proceeded slowly at the State level. On the other hand, it cannot be denied that Federal reform is not always accomplished

overnight. We should remember that Federal implementation of no-fault auto insurance could not help but take a rather extended period of time.

The administration's approach to auto insurance reform seeks to use the unique ability of the Federal Government, especially the Congress, to consider and then establish in broad policy terms the national will concerning an important national issue, leaving the detailed implementation of that policy to lesser levels of Government. We propose that this be done by the adoption of a concurrent resolution urging reform along the principles outlined earlier.

Incidentally, the Council of State Governments has already taken us up on the question of model legislation for the States. Representatives of that organization are meeting with us Thursday in order to get things rolling.

The emphasis of our proposed concurrent resolution is directed toward the crying and immediate need for change in the reparations system. The emphasis of other proposals is frequently at least as much upon the Federal Government assuming the predominant role in the regulation of automobile insurance as it is upon the improvement of the compensation system.

We believe that not only is such emphasis misplaced but that it would be counterproductive to the principal task at hand; that is, prompt reform of the system to assure the more equitable and efficient reparation of auto accident victims. We believe that many in the Congress share our conviction that the reparations system demands reform immediately.

Notwithstanding this support for reform of the reparations system, we feel that a sound solution to the basic and vital issue could well become imperiled if it is linked with the exceedingly complex and divisive issue of State versus Federal regulation of insurance. The root problem to be eradicated is the inadequacy of the fault reparations system. We do not want to impede reform by creating two questions where only one need exist.

We are confident that by orienting the reparations system to first-party, no-fault insurance, the major problems which have plagued the States will be eliminated. These are, primarily, products of the fault system with its emphasis upon adversary proceedings and the defendability of the prospective insured. With no-fault auto insurance, the problem of underwriting individual vehicle owners will change as the system is changed. For example, we would expect the focus of underwriting inquiry to shift from concentration of the applicant's probable credibility as a defendant in a negligence case involving some unknowable plaintiff (whose loss potential is also unknown), to concentration upon the range of loss potential presented by the risk of a known insured to be indemnified under the no-fault contract.

The protective qualities of the insured's motor vehicle should also come to assume a very important role in rate determination, something that has not been possible in the past.

Perhaps of even greater importance, the smaller average loss potential of the young, the poor, the ghetto dweller, and the owners of older or less valuable cars should make them more desirable risks with a consequent lowering of their premium rates. Those insured presenting the potential of greater wage loss, medical loss, or property damage loss (because of a more costly care) would pay relatively higher rates,

and, of course, they would receive the greater protection which they need rather than having to rely upon some other driver having adequate insurance.

Inasmuch as the higher loss potential tends to correlate with ability to pay, a true no-fault system would tend to introduce a new element of fairness in the cost of insurance protection.

In either event, the insurance applicant's safety and traffic violation record may be expected to bear heavily upon his acceptability as a risk and the premium rate which he must pay.

In this connection, let me say that, contrary to some of the claims that have been made, we find nothing in a first-party reparations system which would militate against a safe-driver or merit-rating plan if this were found to be desirable.

Further, the necessary statutory and regulatory mechanisms already exist for coping with these issues and the States will not require a whole new body of law in order to convert to a first-party auto accident reparations system.

If we are correct that it is the tort reparations system which is deficient rather than the insurance mechanism, it seems unwise to seize from the States their regulatory authority just when no-fault reparations plans are being introduced. It would be highly unfair to the States to delay their no-fault plans while the Federal Government debates replacing their regulatory mechanisms with new and unnecessary Federal apparatus.

Also, if the protective attributes of the insured automobile will largely determine the nature and extent of the insurance loss, the wisdom of the marketplace and the forces of competition should be at least as prompt in forcing adjustment in rating plans and underwriting techniques as would be the proddings of the Federal bureaucracy.

Much of the difficulty we have with a no-fault accident reparations system imposed by the Federal Government uniformly on all the States is the lack of experience with such a system. At the present time, the Federal Government cannot mandate a reparations system which has been tried and tested on the State level.

In this connection, we should remember that changes in the reparations system, by themselves, cannot be expected to have any significant near-term influence on accident losses, only on their compensation. To slow and then reverse the death, injury, and property damage toll of accidents, other actions will be needed, again by all levels of government, and we expect the National Highway Traffic Safety Administration to continue to lead the way.

In creating a single, mandatory reparations system, the Federal Government would be blindly preempting the field and foreclosing potentially valuable and instructive experimentation at the State level. Also, while the Federal Motor Vehicle Insurance bill may go farther than some of the States would like to go, it may also not go as far as some others might wish.

For example, in some proposals the tort remedy is partially preserved and to that extent its recognition by the States would be mandatory. This would bar a State which might wish to exclude tort remedy entirely in favor of a complete first-party system from doing so.

I would add that even disinterested scholars have failed to achieve unanimity or even wide consensus as to the details of the ideal repara-



tions system. For example, there has been much debate and there remains such division over the question of whether commercial vehicles should be separately classified and required to respond differently and more extensively in accidents involving pedestrians or other noncommercial motor vehicles. At least initially, States ought to be free to experiment in this regard and to adopt public policies consistent with their needs.

In summary, we believe that the compelling case against the fault-liability insurance reparations system does not require the Federal Government to assume the sole, or even principal, role in the economic regulation of the insurance business.

We further submit that any belief that the Federal Government would, or could, regulate only automobile insurance to the exclusion of the other property and casualty insurance lines with which automobile insurance is so economically intertwined is not well founded.

We are convinced that the adequate, equitable and efficient reparation of auto accident victims is a pressing public policy issue. We are also convinced that the most logical route to solving this problem is through a no-fault automobile insurance system. We do not believe, however, that the Federal Government's assumption of the insurance regulatory function is essential to achieving this end, and reform of the compensation system should not be jeopardized by linking it with the Federal regulation of insurance.

Furthermore, we do not believe that much time would be lost while awaiting and evaluating the response of the States to such an expression of the will of the Congress.

Even if the Congress were to enact a full-blown automobile accident reparation and insurance system this session, both justice and the rule of reason would demand deferral of its effective date long enough to enable the companies and the other affected parties to retool and gear themselves to the new system. Indeed, H.R. 4994 recognizes this need in the 18-month delay factor it provides between enactment and implementation.

If, on the other hand, Congress were to manifest its will through the concurrent resolution we urge, all affected parties would have been put upon fair notice of its determination that reform must be effected one way or the other.

If, contrary to our belief, the States were not to act responsively or in a timely fashion, the Congress would then be justified in foreshortening the effective implementation date of any subsequent Federal legislation which it later found to be essential.

#### WHERE DO WE GO FROM HERE?

The Department's study is now completed. You have our final report and our best judgment as to the kind of a reparations system which shows the most promise.

We hope the Congress, after listening to the views of the other interested parties, will see fit to enact the concurrent resolution we propose, setting forth the principles of the reparations system toward which the States should strive. These principles or goals would give guidance, direction and impetus to the States' own reform efforts. We have gone as far as we can without observation of actual experience. Now is the time for States to act, and we will help them.

Both the Congress and the executive branch should measure the States' progress toward these goals over a reasonable period of time. The Department of Transportation will maintain a program of continuing surveillance of the matter, and provide direct cooperation and assistance to the States. Two years from now, when we have had time to analyze the experience of the several States under new systems, there should be a reexamination of the whole question of auto accident compensation reform and whether or not some future action is desirable.

Mr. Chairman and members of the committee, the problem of motor vehicle compensation is far more complex and far less easily resolved than many believe. But complexity, difficulty, or whatever, should no longer stand in the way of action. We and the States should now be allowed to get on with the job.

This completes my testimony, Mr. Chairman. We will be happy to answer any questions you or the other members of the committee have.

(Secretary Volpe's prepared statement follows:)

STATEMENT OF HON. JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION

"MOTOR VEHICLE CRASH LOSSES AND THEIR COMPENSATION IN THE UNITED STATES"—  
A REPORT SUBMITTED IN COMPLIANCE WITH PUBLIC LAW 90-313

Mr. Chairman and Members of the Committee, I'm very happy to be here today to discuss the final report of the Automobile Insurance and Compensation Study called for by P.L. 90-313.

The research findings of our Study are largely contained in a series of published reports which now number twenty-three. Our policy findings and recommendations are included in the report we are submitting to you today. This final report summarizes the principal factual and judgmental findings of the Study, analyzes the basic alternatives to the present system, and makes a tentative judgment as to what should be done by way of change in the future and how that change should be accomplished.

No end would be served by reviewing once again the problems and disabilities of the existing auto accident reparations system. You have heard them recited before, and they are detailed in the various reports of the Study. Moreover, there appears to be a very broad and heartening consensus among nearly everyone concerned—the industry, many elements of the bar, consumer spokesmen, insurance regulators, and legislators and executives at all levels of government—that the present system is not working well and should be changed.

Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc. Our report without trying to be exhaustive, discusses the broad range of the principal alternatives and some of the advantages and disadvantages of each. I am certain that your hearings will do much to draw out the merits of the various approaches.

What I would like to address principally this morning are our recommendations. Several rather important considerations or judgments have influenced the framing of these recommendations. I would like to mention some of them and discuss one of them at some length.

First, it seems clear, at least to us, that there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go in changing the reparations system. It is also clear that there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings.

We ourselves, don't claim to have definitive answers to these questions either. As a result, it seems to us that we should seek change in a way that maximizes the prospects for truly useful reform; in ways that built on and use changes already under way and those soon to follow. In our judgment the route that offers this prospect is the route of State action, but State action consistent with the broad outlines or principles of a system such as that I will describe. Now we need not, and thus do not insist that a single reform system be imposed upon all the States. The varied experience of the States as they moved to reform should have much to tell us about the most desirable ultimate configuration of the motor vehicle reparations system. In short, considerable similarity of systems is a proper goal, but instigation by standardized Federal directive at this time seems the less attractive course. To be sure, because motor vehicle travel is so much an interstate activity. States should attempt to develop similar reparations systems, and we propose to help them do so. Thus, while we find great intrinsic merit in the State system of insurance regulation, and in ultimate State control of decisions regarding their own reparations systems, some kind of broad advisory national goals or standards, carrying Congressional endorsement, would seem to be very useful and appropriate.

One of the reasons for our belief in the viability and desirability of change in the auto accident reparations system via the State route is that change at that level has clearly moved off dead center and would appear to be achieving some momentum. That statement could not have been made a year ago, and I might add that I think the Study which the Congress mandated has been a contributing factor. I think that this constructive State movement should be strongly encouraged, perhaps guided and helped, *but not* preempted by Federal action. I want to come back to this matter later.

With those general remarks, let me turn to the recommendations themselves.

#### *Summary of Recommendations*

We believe that the States should *begin promptly* to shift to a first-party, non-fault compensation system for automobile accident victims.

We believe that this can be done in such a way that we can reverse ourselves, if the actual performance of the system doesn't meet our expectations.

We believe that recovery for "general" or intangible damages should be drastically limited and carefully circumscribed.

We believe that our relevant institutions, public and private, and the citizens who man them, should be given adequate time to plan for, adapt to and assess the performance of a new system.

We believe that the change should take place at the State level, but that there should be general national goals or principles toward which the States will be moving.

We hope that there would be a minimum of argument over whether full implementation of a no-fault auto accident reparations system would or would not result in cost savings to the public. We believe that the long-range financial impacts of such a fundamental change simply cannot be predicted with any reasonable precision. To be sure, the logic of this situation does imply cost savings under a no-fault system, and we discuss this in our report. Nonetheless, we should not allow ourselves to be unduly distracted by those who wish to argue the question one way or the other. There are other, more important reasons for change which are not in my judgment debatable. And so, as various first-party, no-fault plans are implemented in the States, answers will be forthcoming as to which variant of the program we advocate works better than the present system. By this State development route, the country may be able to spare itself most of the uncertainty, and greatly reduce the financial risk, that would be involved in any single step, "all the way," perhaps irreversible change of the system. A logical first step, for example, might be designed to give confidence that the added costs of ensuring full medical coverage to all victims would be offset by the "savings" achieved by revising the rules on general damages. Thus, the pace of reform should allow the States to absorb changes in digestible and reasonably predictable amounts and allow them to reverse gears or slow down, or speed up, as experience indicates.

Let me describe more specifically the broad outlines of a possible ultimate system which we believe is consistent with the findings and conclusions of our study and the principles we endorse. The policy limits and deductibles I will use should be recognized for what they are—illustrative. (Our Study findings do indicate that they are in appropriate orders of magnitude.)



### *An Illustrative System*

We believe that the present system needs change badly, and needs it now. Based on our extensive study, we believe that the most promising avenue for changes which will better serve the driving public is in the direction of a first-party, no-fault system, combined with modification of the rule on general damages. Recognizing that a little observation is worth a great deal of speculation, we think that a system like the one described below shows the most promise.

*Compulsory First-Party Benefits.*—Every owner of a motor vehicle would be required to carry insurance protecting himself, his family and every uninsured passenger or pedestrian suffering injury as a result of an accident involving the insured vehicle for all economic losses they thereby incur, subject to reasonable limits and deductibles. In addition, the insurance should protect the insured and all members of his family who are part of the same household against losses suffered when they are pedestrians or passengers in another vehicle.

*Required Medical Benefits.*—Full coverage for all medical benefits should be provided with a relatively small permissible deductible per accident but with very high mandatory limits. Any deductible or limit voluntarily assumed by the car owner on behalf of himself and his household would not apply, however, to the medical losses of uninsured pedestrians. Included in covered benefits will be *all* medical rehabilitation expenses within the limits provided. Coverage should be primary as among private systems—that is, payment of benefits by a carrier under this coverage should automatically remove the obligation of any other insurance carrier to pay benefits to the extent that the costs are covered by automobile insurance. However, there should be the greatest freedom open to the insured in selecting his choice and source of coverage.

*Income Loss Protection.*—Coverage would have to be afforded for a relatively high percentage of earned income of the injured or deceased auto accident victim. There should be a short permitted waiting period at the option of the insured for the start of benefits and a permitted monthly benefit ceiling by the insurer of perhaps \$1,000. Voluntarily assumed deductibles or limits would not apply to uninsured pedestrians. Higher benefits could be made available at the options of the insurer and insured.

This coverage might pay wage continuation benefits any time an injured person is prevented from working, either as a result of his disability or as a result of his participation in an approved rehabilitation program. The benefit program should provide for modification as provided contractually between the insurer and insured because of changed circumstances, e.g., the remarriage of a surviving spouse, surviving children reaching their majority, etc.

The minimum duration of mandatory income loss protection should, and probably could, be finally established only after some further investigation and experimentation. Initially, minimum duration might be set at three years, except for victims in approved rehabilitation programs whose protection would continue as long as necessary. Longer durations should be optionally available from the beginning and should also be considered for inclusion in the mandatory coverage as experience dictates. A lump sum mandatory burial benefit of perhaps \$1,000 per person could be included.

*Lost Service Benefits.*—Minimum coverage for the cost of necessary replacement services for non-employed persons (e.g., housewives) could be required up to a benefit of perhaps \$75 per week, with a permitted waiting period for benefits at the option of the insured. Minimum duration of mandatory protection might be the same as for income loss.

*Property Damage.*—Coverage of damages to property, including the insured vehicle, might be required, but with a permissible deductible referable to the vehicle only at the option of the insured of up to a rather high level, perhaps \$1,000 or a third of the value of the car, and with a permissible limitation of coverage by the insurer of \$10,000 per accident. There would be no deductible with respect to the non-vehicular property of others damaged in an accident. The goal should be to offer the widest possible choice of coverage to the insured on a first-party basis.

*Elimination of Action for Damages.*—No recovery for any loss covered by the applicable required coverage would be permitted in any private action for damages. The insured victim's sole recourse for benefits for wage loss, medical loss, lost services, funeral expense (and property damage) should be limited to the insured's required coverage and any additional optional coverages that he has elected to purchase, whether under an auto insurance policy or other voluntary loss reparation program.

The existing right to sue for damages resulting from negligence in car crashes might be drastically curtailed, perhaps remaining only for intangible losses subject to a limitation: no person should recover for intangible losses unless he established that he suffered permanent impairment or loss of function or permanent disfigurement, or that he incurred personal medical expenses (excluding hospital expenses) as a result of the accident in excess of a rather high dollar threshold. The dollar threshold initially chosen should not be considered inviolable but should be reviewed as to its appropriateness at regular, specified intervals.

Drivers should, of course, be allowed to continue to insure against this residual third-party liability.

#### *State or Federal Action Now?*

Understandably, given the rather remarkable degree of consensus that a no-fault solution to the auto accident reparations problem is necessary, interest has gravitated to the issue of whether reform should take place at the State level or Federal level. Obviously, good arguments can be mounted on both sides. Federal preemption was one of the alternatives we looked at closely, but was rejected. I would like to review some of the reasons for our doing so.

One reason, of course, was that this Administration believes strongly that the functions of government should be performed and the effective decisions of government should be made as close to the people as possible. This is a principle that I personally believe in deeply.

But there are other reasons which transcend political philosophy. It seems clear to us, from our study, that the insurance institution including State regulation of insurance, has been held at fault for intrinsic inadequacies in the reparations system itself. In most instances, the basic problems lie in the inadequacy of reparation for the seriously injured or killed, the overcompensation of the minimally injured and the wasteful administrative costs of the system.

It is unfortunate that insurers, in general, have failed to convey to the public and to their legislative representatives that the auto insurance institution inherited a faulty public policy, a policy that has vainly attempted the impossible task of melding tort liability and indemnity insurance into a workable and efficient reparations system. Too often insurers who should have devoted themselves to seeking out the optimum reparations system have chosen to assume the role of advocates for whatever cause seemed best suited to enhance or preserve their market positions. Moreover, insurance regulatory officials have, in general, failed to make clear that they are the captives of a reparations system which they did not create and over which they have little authority. Indeed, in only one State is the financial responsibility law (the foundation of the auto reparations system) regulated and administered by the insurance regulator. Of course, any governmentally mandated reparations system must look toward achieving an equitable balance between the interests of those who fund the system, those who are its current or potential beneficiaries, and those who operate it.

No purpose would be served here by dwelling upon the deficiencies of the fault system. As you know, we have made our judgment condemning that system, and we are at least as vigorous in urging its replacement with a no-fault reparations plan as those who demand an instant Federal solution. As far as we are concerned the question is not whether there should be reform, or what that reform should be, but how it should be brought about and by whom.

Some urge immediate Federal enactment of a complete no-fault insurance program contending that reliance on State-by-State action would produce reform only after many years, if at all. We realize that some desirable reforms, for example, the model bill on consumer credit insurance, have proceeded slowly at the State level. On the other hand, it cannot be denied that Federal reform is not always accomplished overnight.

Uniquely in such situations, the Federal Government can exert considerable leverage to obtain compliance with its desires through direct admonition or even the most indirect intimation as to the possible consequences of non-compliance. For example, the simple manifestation of Federal concern over certain problems of insurance company stock-holders led almost overnight to the universal adoption by the States of insider trading statutes and proxy regulations. Indeed, this was accomplished in less time, probably, than suitable legislation could have been fleshed out and passed by the Congress. We should remember that Federal implementation of no-fault auto insurance could not help but take a rather extended period of time.



The Administration's approach to auto insurance reform seeks to use the unique ability of the Federal Government, especially the Congress, to consider and then establish in broad policy terms the national will concerning an important national issue, leaving the detailed implementation of that policy to lesser levels of government. We propose that this be done by the adoption of a Concurrent Resolution urging reform along the principles outlined earlier.

The emphasis of our proposed Concurrent Resolution is directed toward the carrying and immediate need for change in the reparations system. The emphasis of other proposals is frequently at least as much upon the Federal Government assuming the predominant role in the regulation of automobile insurance as it is upon the improvement of the compensation system. We believe that not only is such emphasis misplaced but that it would be counterproductive to the principal task at hand, i.e., prompt reform of the system to assure the more equitable and efficient reparation of auto accident victims. We believe strongly that realization of this paramount objective should not be delayed while we debate, at such length as the importance of the subject demands, whether automobile insurance, and the casualty and property lines to which it is inextricably tied, should be regulated at the State or Federal level or both. We believe that many in the Congress share our conviction that the reparations system demands reform immediately. Notwithstanding this support for reform of the reparations system, we feel that a sound solution to the basic and vital issue could well become imperiled if it is linked with the exceedingly complex and divisive issue of State versus Federal regulation of insurance. The root problem to be eradicated is the inadequacy of the fault reparations system. We do not want to impede reform by creating two questions where only one need exist.

We are confident that by orienting the reparations system to first-party, no-fault insurance, the major problems which have plagued the States will be eliminated. These are, primarily, products of the fault system with its emphasis upon adversary proceedings and the defendability of the prospective insured. With no-fault auto insurance, the problem of underwriting individual vehicle owners will change as the system is changed. For example, we would expect the focus of underwriting inquiry to shift from concentration on the applicant's probable credibility as a defendant in a negligence case involving some *unknowable* plaintiff (whose loss potential is also unknown), to concentration upon the range of loss potential presented by the risk of a *known* insured to be indemnified under the no-fault contract. The protective qualities of the insured's motor vehicle should also come to assume a very important role in rate determination, something that has not been possible in the past.

Perhaps of even greater importance, the smaller average loss potential of the young, the poor, the ghetto dweller, and the owners of older or less valuable cars should make them more desirable risks with a consequent lowering of their premium rates. Those insured presenting the potential of greater wage loss, medical loss, or property damage loss (because of a more costly car) would pay relatively higher rates, and, of course, they would receive the greater protection which they need rather than having to rely upon some other driver having adequate insurance. Inasmuch as the higher loss potential tends to correlate with "ability to pay," a true no-fault system would tend to introduce a new element of fairness in the cost of insurance protection.

In either event, the insurance applicant's safety and traffic violation record may be expected to bear heavily upon his acceptability as a risk and the premium rate which he must pay. In this connection, let me say that, contrary to some of the claims that have been made, we find nothing in a first-party reparations system which would militate against a safe-driver or merit-rating plan if this were found to be desirable. Indeed, to such extent that single car accidents are presently ignored under liability insurance merit rating plans, their inclusion under first-party plans might constitute an improvement.

We have stated our belief that most of our current automobile insurance problems spring from defects in the tort reparations system rather than from defects in the insurance institution itself and that conversion to a first-party, no-fault insurance reparation regime should cause the disappearance of many of those problems and difficulties. As this happens, State insurance regulatory authorities will be free to deal with any remaining problems with the same tools which they have successfully used in dealing with the other first-party insurance problems.

Further, the necessary statutory and regulatory mechanisms already exist for coping with these issues and the States will not require a whole new body of law in order to convert to a first-party auto accident reparations system.

If we are correct that it is the tort reparations system which is deficient rather than the insurance mechanism, it seems unwise to seize from the States their regulatory authority just when no-fault reparations plans are being introduced. It would be highly unfair to the States to delay their no-fault plans while the Federal Government debates replacing their regulatory mechanisms with a new and unnecessary Federal apparatus. Reform of the reparations system should not be made to await the creation of such a Federal apparatus.

In this connection, other proposals often seem to address old problems, many of which will be eliminated or altered under a no-fault first-party system. For example, under a first-party, no-fault system, a motorist's failure to insure would result in deprivation to him and his dependents, thus providing new incentives and making unnecessary the harsh penalties now required to enforce compliance with a compulsory liability insurance law. Also, if the protective attributes of the insured automobile will largely determine the nature and extent of the insurance loss, the wisdom of the marketplace and the forces of competition should be at least as prompt in forcing adjustment in rating plans and underwriting techniques as would the proceedings of a Federal bureaucracy.

Moreover, under a no-fault reparations system, the regulator will be able to demand that rates and rating plans appropriately reflect the protective characteristics of the insured motor vehicle. Similarly, problems involving the unavailability of insurance and of policy cancellation or nonrenewal should significantly lessen under a no-fault system. In any event, we are confident that such problems as might exist would be different from those being encountered today under the tort liability insurance system.

Much of the difficulty we have with a no-fault accident reparations system imposed by the Federal Government uniformly on all the States is the lack of experience with such a system. At the present time, the Federal Government cannot mandate a reparations system which has been tried and tested on the State level.

In this connection, we should remember that changes in the reparations system, by themselves, cannot be expected to have any significant near-term influence on accident losses, only on their compensation. To slow and then reverse the death, injury and property damage toll of accidents, other actions will be needed, again by all levels of government, and we expect the National Highway Traffic Safety Administration to continue to lead the way.

In creating a single, mandatory reparations system, the Federal Government would be blindly preempting the field and foreclosing potentially valuable and instructive experimentation at the State level. Also, while the Federal Motor Vehicle Insurance Bill may go farther than some of the States would like to go, it may also not go as far as some others might wish. For example, in some proposals the tort remedy is partially preserved and to that extent its recognition by the States would be mandatory. This would bar a State which might wish to exclude the tort remedy entirely in favor of a complete first-party system from doing so.

I would add that even disinterested scholars have failed to achieve unanimity or even wide consensus as to the details of the ideal reparations system. For example, there has been much debate and there remains much division on the question of whether commercial vehicles should be separately classified and required to respond differently and more extensively in accidents involving pedestrians or other non-commercial motor vehicles. At least initially, States ought to be free to experiment in this regard and to adopt public policies consistent with their needs.

Whether deductibles should be permitted and, if so, their variety and range would seem better left to States' determination than to Federal fiat imposing a single, uniform rule. The Federal Government has a natural and proper interest in making certain that all automobile accident victims are reasonably compensated, but it has far less reason to demand that those victims be compensated exactly, and only, in the manner it prescribes.

It should be noted that under a contractual reparations system, each State would be in a far better position to control the quality and level of reparations for its citizens *without respect to where the accident occurs* than has ever been the case under the tort liability system. It has often developed under the present system that the substantive rights of the accident victim as regards compensation may be determined by the law of the place where the accident occurred.

Since the right to compensation under a first-party reparations system is clearly contractual, the law and public policy of the State requiring it will set the basic standards for the victim's compensation whether a loss was incurred at home or in another State or nation.

In summary, we believe that the compelling case against the fault-liability insurance reparations system does not require the Federal Government to assume the sole, or even a principal, role in the economic regulation of the insurance business. We further submit that any belief that the Federal Government would, or could, regulate only automobile insurance to the exclusion of the other property and casualty insurance lines with which automobile insurance is so economically intertwined is not well founded.

We are convinced that the adequate, equitable and efficient reparation of auto accident victims is a pressing public policy issue. We are also convinced that the most logical route to solving this problem is through a no-fault automobile insurance system. We do not believe, however, that the Federal Government's assumption of the insurance regulatory function is essential to achieving this end, and reform of the compensation system should not be jeopardized by linking it with the Federal regulation of insurance.

Furthermore, we do not believe that much time would be lost while awaiting and evaluating the response of the States to such an expression of the will of the Congress. Even if the Congress were to enact a full-blown automobile accident reparation and insurance system this session, both justice and the rule of reason would demand deferral of its effective date long enough to enable the companies and the other affected parties to re-tool and gear themselves to the new system. Indeed, H.R. 4994 recognizes this need in the 18 month delay factor it provides between enactment and implementation. If, on the other hand, Congress were to manifest its will through the Concurrent Resolution we urge, all affected parties would have been put upon fair notice of its determination that reform must be effected one way or the other. If, contrary to our belief, the States were not to act responsively or in a timely fashion, the Congress would then be justified in foreshortening the effective implementation date of any subsequent Federal legislation which it later found to be essential.

#### *Where Do We Go From Here?*

The Department's study is now completed. You have our final report and our best judgment as to the kind of a reparations system which shows the most promise.

We hope the Congress, after listening to the views of the other interested parties, will see fit to enact the Concurrent Resolution we propose, setting forth the principles of the reparations system toward which the States should strive. These "principles" or "goals" would give guidance, direction and impetus to the States' own reform efforts. We have gone as far as we can without observation of actual experience. Now is the time for the States to act, and we will help them.

Both the Congress and the Executive should measure the States' progress toward these goals over a reasonable period of time. The Department of Transportation will maintain a program of continuing surveillance of the matter, and provide direct cooperation and assistance to the States. Two years from now, when we have had time to analyze the experience of the several States under new systems, there should be a reexamination of the whole question of auto accident compensation reform and whether or not some future action is desirable.

You have our draft Concurrent Resolution. If it is passed, we would look for the States to introduce no-fault reparations systems along the general lines we suggest. We would assist both the States and instrumentalities of the States in this effort. In addition to ensuring that the ultimate development of the system is brought about by those who we believe can do it best, the States themselves, this approach would ensure the opportunity for full nationwide participation in such development.

Mr. Chairman, the problem of motor vehicle compensation is far more complex and far less easily resolved than many believe. But complexity, difficulty or whatever, should no longer stand in the way of action. We and the States should now be allowed to get on with the job.

Mr. Moss. Thank you, Mr. Secretary.

Mr. Secretary, I believe that the man who finds the facts is generally in the best position to make a decision with regard to them, and under Public Law 90-313 the Secretary was charged with making a study



of our motor vehicle compensation system and making a report to the President and to the Congress.

In my opinion, that became a matter personal to the Secretary in determining the scope and the content of the report and the recommendations. Yet, I note that upon the introduction of House Concurrent Resolution 241, the letter of transmittal from your Department to the Speaker stated that it had been cleared by the Office of Management and Budget as being consistent with the program of the President.

Did your recommendations or any of your conclusions undergo any modification?

Secretary VOLPE. The question of submission of legislation—that is, proposed legislation, or testimony to committees of the Congress of the United States—is always cleared with the Office of Management and Budget. That has been the practice for many, many years, as I am sure you are probably aware, Mr. Chairman.

As far as our particular recommendations are concerned, I think the major part of any changes were in editing. I don't think there are any major changes that took place. I think they were primarily in terms of emphasis or, as I say, editing changes, but nothing of substance.

Mr. Moss. In other words, the rather widespread newspaper comment and comment in other media as to the nature of your own personal views are in error in assigning a role to the Office of the President or the Office of Management and Budget that resulted in modification of policy?

Secretary VOLPE. You are correct, sir.

Mr. Moss. You state that the policy—and it is certainly true—under the administrations of both political parties has long been that legislation and testimony is normally cleared with the Office of Management and Budget.

I, on the other hand, as a Member of Congress, jealous of the rights of the Congress to secure free expressions of opinion, am cognizant of the fact that the act itself in the first clause in item B states:

The Secretary shall submit to the President and Congress interim reports from time to time, the final report not later than 24 months after the date of enactment of this joint resolution. Such final report shall contain a detailed statement of the findings, conclusions, and recommendations of the Secretary and may propose such legislation or other action as the Secretary considers necessary to carry out his recommendations.

It was my understanding, and I think generally the intent of the Congress, that that was to insure that the views of the study would not have to be cleared with anyone but would represent only those of the Secretary and not of the Department or of the Executive himself. That is why it was specifically fixed in the Office of the Secretary.

Secretary VOLPE. I am not certain about all other studies, Mr. Chairman, but I think you will find that the wording in most statutory requests for studies and reports and recommendations of this kind contain, if I remember correctly, more or less identical language. I think that the clearance process through the Bureau of the Budget until July 1 of last year—and now the Office of Management and Budget—was primarily to coordinate budgetary action that might be involved in such recommendations and, second, particularly since that

office has now changed to the Office of Management and Budget, to insure coordination of the management responsibilities that may be inherent in any proposed legislation that might be submitted with the recommendations.

Mr. Moss. Well, of course, we could go on at length on this. I happen to feel very strongly that we have permitted to develop in the Federal system a monstrosity in the form of the Office of Management and Budget which acts as an effective buffer against the Congress' access, and I think frequently access by the Secretaries who have primary responsibilities for the administration of their departments.

But that is a matter for another time. I merely wanted the record to reflect my own conviction that when we ask for recommendations of the Secretary or of a head of an agency that Congress goes to that point because it wants that recommendation and not something filtered through an agency which has grown far beyond the dimensions ever contemplated in the Budget and Accounting Act of 1921.

Secretary VOLPE. If I might add one comment to that, Mr. Chairman. My feelings about this matter stem not only from my review of the wonderful study that was made here, started by my predecessors and continued through the last 2 years, first under Paul Cherington and then Charlie Baker's direction, with Dick Walsh handling the major part of the study, but also from my service as Governor of Massachusetts.

During about 5 of the 6 years as Governor I introduced legislation that called for reform of automobile insurance, and if I were sitting back there in Massachusetts right now as the Governor of that State, I think I would probably be giving you testimony similar to this, but, not as detailed, because I wouldn't have had access to the study.

But insofar as the recommendations are concerned, I would still like to feel—and I am rather proud to say—that as the result of the continuing attack we have made on this problem in Massachusetts, my successor was able to get the first, at least “almost,” no-fault insurance in the Nation, outside of Puerto Rico.

So I was not unacquainted with the problem, and I did and I do feel quite strongly that insurance regulation should remain in the hands of the States. I think that the experience of the Federal Government in enacting safety standards, which relates directly to the insurance field, and which is all tied together to the operation of trying to reduce the number of accidents and the number of deaths, as well as trying to reduce the cost of insurance supports this position. It has worked very well having the Federal Government take a very strong leadership role, but leaving to the States, themselves, generally, the operation of and the enforcement of these standards.

Mr. Moss. Mr. Secretary, I wanted to check with counsel, but as I recall, we preempted the field of automobile safety standards, didn't we?

Secretary VOLPE. We have not preempted the area of highway safety per se, Mr. Chairman. Each State must adopt the standards issued under the Highway Safety Act of 1966. We set, for instance, a standard that we believe is most desirable and very, very essential for proper safety on the highways.

Now, I will just take one of them; namely, the requirement for an implied consent law at 0.10. Now, the majority of States—as a matter



of fact, all but, I think, one State, if I remember correctly—has adopted such a statute.

Some of them have adopted it at 0.15, my State having been one of those. I fought very hard for 0.10 and didn't get anything for about 3 years but finally got 0.15. The fact is that more and more States are now coming in on the line with 0.10.

This has been done through a combination of pushing on our part and calling attention to the records that have been developed in other States where these standards have been adopted.

There is, for instance, the matter of helmets for motorcyclists. The State of Michigan adopted the helmet standards that we proposed, and there was a reduction in the number of deaths from motorcycles for a year or two. Then, for whatever reasons, the State of Michigan decided to repeal the standard, and the year after they repealed the act, the number of motorcycle deaths went up again.

So we do have the power of leadership, of guidance. Generally speaking, working with the National Governors' Conference and with the Council of State Governments, we are able to get very satisfactory results.

Now, there are one or two or three or four States from time to time that could not come into line as quickly as we would like, but I think the force of public opinion and the glare of publicity—some of them didn't like a list that I published not too long ago showing how their safety standards ranked with respect to the other States—provide strong positive incentives.

Two or three Governors indicated their displeasure, but that was part of my job of trying to get them to recognize that this was extremely important, and other States were adopting these regulations and the standards. I felt that these States ought to do likewise.

Mr. Moss. Mr. Secretary, if no-fault motor vehicle insurance is left with the States to adopt on a State-by-State basis, assuming that a State does adopt legislation meeting the specifications set out in your report, won't that State be penalizing its citizens since they will also have to pay for automobile liability coverage to protect themselves when driving outside that State?

Then, carrying the point a little further, isn't it also true that until all of the contiguous 48 States and the District of Columbia adopt a no-fault proposal, it will be necessary for any motorist who might drive in a State where the no-fault approach is not in effect to also carry liability insurance in order to protect himself?

Secretary VOLPE. He would have to be covered both by the first-party insurance and liability insurance.

Mr. Moss. You say he would not have to carry liability insurance?

Secretary VOLPE. I said he would have both the first-party and the liability insurance.

Mr. Moss. Wouldn't he have to pay for it?

Secretary VOLPE. Yes; but the cost of his liability insurance would be reduced to the extent that his exposure to suit was also reduced.

Mr. Moss. It would be an additional cost over what would be required if there was a uniform policy of no-fault throughout the Nation?

Secretary VOLPE. Yes; I imagine that the cost would be less if there were the same type of no-fault insurance across the entire Nation. Just let me doublecheck that with the specialist.

That is correct, sir.

Mr. Moss. So to the extent that we have a fragmented policy, costs will be higher for many persons.

Secretary VOLPE. Until such time as you get a complete coverage in all of the States, Mr. Chairman, you are correct. It just depends on the values implicit in the arguments I have used, which I believe are substantial, concerning the Federal Government taking over the regulation of this phase of the insurance and the possibility of having to regulate all insurance. Regulation, up till now has been the preserve of the States, and its retention there is something that I think merits a great deal of consideration.

Mr. Moss. Mr. Secretary, a check of some records indicates that our Federal Government passed a workmen's compensation act covering certain civilian employees in 1908 in an effort to give leadership. The first State act was passed in 1911.

Secretary VOLPE. That was Massachusetts, sir.

Mr. Moss. That is correct. And it has given much leadership, and it was not until 1940, 37 years later, that the last State passed a workmen's compensation act.

Do you have any reason to believe they will act more rapidly here on this issue than on that?

There had been 60 new uniform State laws approved and proposed for the States by the National Conference of Commissioners on Uniform State Laws by 1915. As of October 15, 1969, 55 years later, none had been adopted by all of the States.

Secretary VOLPE. Mr. Chairman, let me say that it all depends on how hard the leadership tries and how much desire there is on the part of the leadership. I think that is true at the State level, where the leader is the Governor. I think it is true here in the Nation's Capital. I think it is true with regard to the various Federal departments that are charged with important public responsibilities such as mine.

I believe that in a case like this one, where the facts are so clear and the correct solution so unmistakable, that the job of getting the States to come into line—especially with the kinds of coordinating organizations that presently exist which did not exist back in 1908 or 1911—is much easier.

At that time organizations such as the Council of State Governments, that got together primarily for the purpose of exchanging views, which is fine, but they now have become—particularly the Council of State Governments, which serves as an umbrella for both the National Governors' Conference, and the Organization of Lieutenant Governors, the Attorneys General, and so forth—an instrument and vehicle for implementing action at the State level. The Council of State Governments, as I indicated earlier, called us the day after I testified before the Senate Committee, and said, "We would like to go to work on this." So you do have, I think, a different situation than prevailed years ago, and I would certainly say to you, sir, having had the privilege of serving as chairman of the National Governors' Conference just 2 or 3 years ago, that I think, through this vehicle and the Council of State Governments, that you would get responsive action, and I do not think that it would be piecemeal.

I think that through the Council of State Governments and the National Conference of Commissioners on Uniform State Laws you

can have developed model State legislation for the 50 different States and thereby make unnecessary the enactment of 50 different kinds of legislation that, as you and I would certainly agree, would not be the thing to have.

Mr. Moss. I note that after the report was introduced on the 18th of March, bills were introduced in a number of State legislatures.

Secretary VOLPE. At least 27 of them, sir.

Mr. Moss. And not one of those bills met the specifications set forth in your report.

Secretary VOLPE. I have not examined all of the bills. I remember from my reading last night that 27 States had bills introduced. The Congress has not yet acted. The Council of State Governments has acted, and as a matter of fact, our people are meeting with them later this week for the purpose of assisting them in getting on with the State reform actions anyway we can.

I believe that given the substantial number of States that have legislative sessions next year, and the fact that this is not a brand new subject for most of them—in my State, as I say, I worked with this for 5 years before my successor was able to—I helped to develop a climate in which a bill finally passed—there will be positive State action.

This has been true in other States where there have been attempts at reform—for example, New York. I would say that given the situation as it is developing now, and given our close relationship with the National Governors Conference, that yes, I could envision adoption of reform by the States, particularly if the Governors were to push this, and I think they would.

I am told by Mr. Walsh that some of the plans that were submitted came very close to the standards we have suggested here in our legislation. The Davies plan in Minnesota, for example, falls in that category.

Mr. Moss. What would your reaction be to the imposition of minimum Federal standards which would have to be met by the States?

Secretary VOLPE. I think that if such a proposal could be worked out without having the Federal Government take what I would call the principal role and, in effect, take over the regulatory powers, it would be something that I would not object to.

What I do object to is having the Federal Government assume the role of directly regulating the industry in this particular area, because I am sure it would lead to regulation in the entire insurance industry, I think we have too many industries today that are regulated—although some industries should be regulated more, as a matter of fact. But what I am saying is that in some cases providing a great deal of regulation can reduce industry performance rather than improve it.

I would prefer performance standards, and then let them meet those performance standards rather than regulate by crossing every T and putting a comma every place we think it ought to be.

Mr. Moss. Well, Mr. Secretary, we might find it very fruitful to explore during the next few weeks in greater detail what is meant by “performance standards” and “minimum standards” and see if we can come closer to a meeting of the minds.

Secretary VOLPE. We are, at the present time, as a matter of fact, analyzing the various bills, including yours, sir, that have been introduced.



Mr. Moss. I am intrigued, though, at the strong administration position on this policy in light of the fact that I am being urged to support in the field of health insurance a policy contradictory of the one being urged on us today.

Secretary VOLPE. Here we have a very difficult situation, I believe, Mr. Chairman. There is a great deal of experience, and we have had some very unfortunate experiences, as a matter of fact. As former Governor of Massachusetts, I want to express myself on that point. I know what happened to my budget in health, welfare, and a few other areas as a result of actions taken by the Federal Government, as well as actions within my own State.

I am not going to place the blame all on the Federal Government by any means. But we have had a very definite experience in that area, whereas we have not had that kind of experience in this area on a national basis or on this kind of a system.

Mr. Moss. Not on this kind of a system, but certainly in the broad field of insurance we have a great mass of experience.

Secretary VOLPE. Of course, we have all kinds of experience but not in auto insurance on a first-party, no-fault basis.

Mr. Moss. Mr. Secretary, in order to comply with the Legislative Reorganization Act of 1970, the committee will need 5-year cost estimates for implementing the provisions of the legislation. Would you supply for the committee cost estimates for House Concurrent Resolution 241 and House bill 4994?

Secretary VOLPE. We shall be pleased to do so.

(The following information was received for the record:)

DEPARTMENT OF TRANSPORTATION,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 6, 1971.

HON. JOHN E. MOSS,

*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The enclosed cost projections for implementation of H.C.R. 241 and H.R. 7514 complete the list of items which were promised the Committee by Secretary Volpe in his April 20 testimony.

A special caution would seem to be in order with respect to these cost projections. In the absence of any analogous Federal program or prior experience in this area, truly reliable and accurate forecasts of program costs are probably impossible. The forecasts are based on those needs that can be perceived and costed now; those needs which have not been identified are, of course, not reflected. For this reason those estimates would tend to reflect the lower bound of the actual range of likely Federal implementation costs.

Sincerely,

CHARLES D. BAKER,  
*Assistant Secretary.*

FIVE-YEAR COST ESTIMATES FOR IMPLEMENTING H.R. 7514 AND HOUSE CONCURRENT RESOLUTION 241

It should be noted that these figures represent general estimates based on simple projections of cost and do not predict future economic conditions nor make allowances for possible changes in the scope of responsibilities which might result from actual experience gained in implementing this legislation. Thus, the estimates do not represent a commitment as to the amounts which would be included in future budgets, if this legislation was implemented.

*House Concurrent Resolution 241*

This resolution would require the Department of Transportation to provide information and assistance on automobile insurance reform to those States which requested it. In addition, the Department would be required to monitor progress at the State level in adopting auto insurance reform and to report this progress to the Congress.

These responsibilities would not require extensive facilities or new staff. The capabilities to perform these functions already exist within the Department, and it is anticipated that any additional costs would be minimal and could be absorbed within the current Department of Transportation budget.

*H.R. 7514*

The Department of Transportation would be required to assume responsibilities in three major areas under the provisions of H.R. 7514. These are:

- (1) Regulation and approval of policy forms and provisions
- (2) Establishment of a Uniform Statistical Plan
- (3) Regulation of Assigned Claims Plans

These responsibilities will involve coordination and exchange of information with the insurance industry, State insurance departments and other State and Federal agencies. The actual cost of implementing these responsibilities would be likely to vary greatly, depending how much of an insurance regulatory role the Department of Transportation was required to assume. If the States were to decide to reduce their own regulatory expense by transferring all policy form review and assigned risk functions to the Federal Government, then the Department of Transportation would require significantly more personnel and would incur higher costs. If the industry and States, however, were willing to assume all or the bulk of these burdens, then the Department's expense might be less than the estimate below.

The following assumptions were made in making the following estimates:

(1) All responsibilities would be handled centrally from the Department of Transportation Headquarters.

(2) The responsibilities would be performed by an Office of Insurance in the Department of Transportation, comprising four sections: Policy Forms and Program Review Division, Uniform Statistical Plan Division, Assigned Claims Plan Division, Research Division.

(3) Most of the data collection provisions of the Uniform Statistical Plan would be carried out through an independent statistical agent appointed by the Secretary as provided for in the bill.

(4) There would be heavy dependence on expert private consultants during the first two years of operation to assist in setting the necessary regulations and operating procedures.

(5) Several *unpaid* advisory committees would be established to ensure adequate representation and consideration of all points of view in the carrying out of the provisions of H.R. 7514.

|                             | 1st year  | 2d year   | 3d year   | 4th year  | 5th year    |
|-----------------------------|-----------|-----------|-----------|-----------|-------------|
| Personnel.....              | \$484,581 | \$949,644 | \$974,028 | \$971,028 | \$1,008,910 |
| Travel.....                 | 40,000    | 40,000    | 20,000    | 20,000    | 20,000      |
| Contractual services.....   | 500,027   | 741,046   | 739,097   | 739,097   | 768,123     |
| Equipment and printing..... | 38,000    | 38,000    | 13,000    | 13,000    | 13,000      |
| Total.....                  | 1,062,608 | 1,768,690 | 1,743,125 | 1,743,125 | 1,810,033   |

Mr. Moss. Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman. Under the legislation before us, Mr. Secretary, as I understand it, every owner of a motor vehicle will be required to purchase no-fault automobile insurance.

I know in these records here we have the information as to how many States require this now. I understand there are only three or four States—my State being one of them—that actually requires the purchase of insurance; is that correct?



Secretary VOLPE. Massachusetts, North Carolina and New York State.

Mr. BROYHILL. And there is quite a bit of information in here concerning that.

I am interested in the experience of Massachusetts. I assume that there will be some opportunity to review that later on, so we can go into that then.

Mr. MOSS. The Governor of Massachusetts will be before us.

Mr. BROYHILL. You indicated there will be an extended period of time before you can implement a national plan. Do you have a staff now that can take over the regulation of automobile insurance plans on a nationwide basis?

Secretary VOLPE. No, we do not, sir.

Mr. BROYHILL. This would have to be a sizable staff. Would it have to be a sizable budget?

Secretary VOLPE. I imagine it would be a major undertaking.

Mr. BROYHILL. You have no idea as to the magnitude of the staff or the budget?

Secretary VOLPE. I have held department head positions in State government, one in the Federal Government, and served as an elected official in the State and now as a member of the Cabinet, and I don't know of any of these things that are done with a small number of people. I imagine this would be a gigantic task and would involve rather substantial sums of money.

On the other hand, somebody has to do the job. As I indicated earlier, I, for one, would not hesitate one moment if I felt that the States were lagging or the States weren't paying any attention to us.

I don't think that is going to happen. But were that to happen, I wouldn't hesitate for one moment to say we have got to get the job done: it isn't being done, and let us do it here at the Federal level setting the standards and so forth and, hopefully, allowing them to do the regulating themselves, but at least setting the regulatory standards up here at the Federal level.

Mr. BROYHILL. You have set a model plan that would be available to consumers. Have you had the opportunity to provide any cost estimates to the consumers of this model plan?

Secretary VOLPE. We have not, Congressman. I don't think anyone can provide a breakdown of what the costs would be if this type of plan were to be adopted, either through Federal or State action.

On the other hand, it stands to reason, if you look over the study, and based on my own experience in Massachusetts, that a very substantial part of the premium dollar is not now going to the insured.

Based on the first 3 months of operation in Massachusetts, for instance, there has been a very substantial reduction in the number of claims submitted, as well as a substantial reduction in the amount of money paid out.

So I would say, although we can't give you specific figures, there is every reason to believe that first-party, no-fault insurance would be less costly than the present liability insurance.

Mr. BROYHILL. To the consumer?

Secretary VOLPE. To the consumer, yes, sir.

Mr. BROYHILL. Now, a question was asked a few moments ago about if liability insurance would be carried simultaneously along with a no-fault plan. I would assume that in the State of Massachusetts owners of motor vehicles carry liability vehicle insurance over and above these limits set in the model plan?

Secretary VOLPE. That is correct, sir, liability insurance is still required to be carried in Massachusetts.

Mr. BROYHILL. Now, under present circumstances every citizen has a right to sue if a citizen has been injured because of the negligence of others. Now, what right would the citizens have to sue under your model plan assuming negligence is present in the case?

Secretary VOLPE. This would still be permitted if the victim suffered permanent injury or disfigurement or if the medical expenses exceeded certain limits.

This plan would not deprive a citizen of his right to bring suit for these kinds of payment.

Mr. BROYHILL. Over and above the limits in the policy?

Secretary VOLPE. That is correct.

Mr. BROYHILL. Now, what are we doing to reduce accidents? I know this is a little bit off the subject here, Mr. Chairman——

Secretary VOLPE. I am also delighted to talk about it, if you have the time.

Mr. MOSS. The chair is inclined to be indulgent, and you gentlemen may proceed.

Mr. BROYHILL. I know there is a proposal to put a limitation on the speed of automobiles. This is coming from your Department; is it not, this proposal?

Secretary VOLPE. That is correct, sir. It is just one of many areas in which we are working. We don't believe that the reduction of the highway carnage is going to be stopped by following any one single avenue. It is going to take a total attack on both the vehicle, the driver, and the highway.

Mr. BROYHILL. Isn't speed one of the major causes of accidents?

Secretary VOLPE. Speed is an important cause of accidents, but alcohol is the worst cause of fatal accidents. Alcohol is involved in one form or another in approximately 50 percent of the deaths caused on our highways in this Nation. A terrible indictment, if I may say so, of our Nation, where approximately 50 percent or 25,000 or 30,000 of our fellow citizens are killed as a result of alcohol accidents. In contrast, in Sweden only 10 percent of highway deaths are caused by alcohol.

Mr. BROYHILL. Can you tell us, in your opinion, why?

Secretary VOLPE. I think there are several reasons. One of them is that they do not joke about the drunk. The comedians don't glorify him. The courts treat him pretty stiffly and pretty sternly.

I would say that in Sweden people know they just can't get away with it and, therefore, the amount of drinking, heavy drinking, that takes place when a person is driving a motor vehicle is a great deal less than in this country. The same thing applies, as a matter of fact, in Great Britain even though the figures aren't quite as favorable as Sweden, but they are much better than they are in our country.

Mr. BROYHILL. One more question and then I am through in this area. Do you have adequate authority to limit the speed of automobiles or limit the ability of automobiles to exceed certain speeds, or do you have to come back to Congress for additional authority?

Secretary VOLPE. I think we have sufficient authority, sir.

Mr. BROYHILL. That is all I have.

Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Secretary, there are several problems that arise in my mind concerning regulation of this matter at the State level. Let me predicate what I have to say with this: As you know, of course, we are dealing both with insurance law and tort law and this would drastically change both.

Of course, this is not just a question of insurance regulation. I assume you could change insurance and tort law and still leave regulatory functions to the States with respect to rates; could you not?

Secretary VOLPE. You could.

Mr. ECKHARDT. What troubles me is the change of tort law and the insurance law with respect to liability. That is what troubles me a great deal with leaving the matter to the States. The regulatory question poses no real problem.

Let us suppose, for instance, that A and B are in an accident in Texas. Let us assume that under Texas law the ordinary tort law applies. There is no limitation of liability, but the insurance of one or both of the cars was obtained in Connecticut, and there is a limitation, say, of \$100,000 there.

Of course, had the accident occurred in Connecticut, the limitation of liability would have been the same as that of the insurance, as I understand, under the proposed provisions.

Now, suppose there is a judgment in Texas for \$200,000. Clearly, the \$200,000 judgment was valid because of the accident occurring in Texas and would be a liability of the party against whom the judgment was granted, but the limitation of the insurance coverage would be governed by the party's contract which would be subject to Connecticut law, I assume. I don't believe the fact that the party was held liable to the extent of \$200,000 in Texas would increase the insurance company's liability under its valid Connecticut contract.

Do you find those conclusions to be correct, or am I incorrect on this proposition?

Secretary VOLPE. My expert is writing a few things down, but let me give you off the top of my head what the situation would be.

No. 1, if Texas had adopted a first-party, no-fault insurance——

Mr. ECKHARDT. I am saying they have not in the hypothetical situation.

Secretary VOLPE. So my premise would not apply.

Mr. ECKHARDT. Connecticut has.

Secretary VOLPE. And the State of Texas had not adopted such a plan?

Mr. ECKHARDT. That is right.

Secretary VOLPE. Then with the fact that Connecticut had, and the limit there was \$100,000, and the judgment was entered for \$200,000, what would happen?

Dick, you have written it out, and you read it.



Mr. WALSH. I think insurance policies will have to carry some kind of extra territoriality provisions for out-of-State travel until there is some kind of consistent no-fault rule across the land.

Conflict of laws issues exist today, and while they do present some problems, they can usually be accommodated within insurance policies themselves.

Mr. ECKHARDT. I don't find any difficulty at all about the conflict of law question. The only thing is that it seems to me that the conflict of law question clearly determines the contract liability originating in the State in which both contracting parties live and where the contract was made in the hypothetical situation I gave.

On the other hand, the tort liability would clearly be covered under the conflict of law, or at least would be amenable, if the State wanted to make it so, to the laws of the State in which the accident occurred and in which both parties were at the time.

It seems to me that you simply have Texas governing the question of liability and Connecticut determining the question of contract liability of the insurance company to the insured. It seems to me we raise exactly the same question the chairman raised a minute ago: It would require the person in Connecticut, if he were traveling in Texas or another State of that nature, to carry additional insurance which would, of course, be at a cost to him.

Mr. WALSH. Indeed.

Mr. ECKHARDT. Let me raise another question, Mr. Secretary. Suppose the situation involves Connecticut, with the same law I have described, and Florida, and let us assume that both States have something like a uniform law, at least with respect to the limits of liability. The private automobiles have a \$100,000 limit, as I described, in both Connecticut and Florida, but commercial vehicles have a \$200,000 limitation. You, yourself, I think, in your testimony envisaged that possibility.

But let us suppose that Connecticut defines the commercial vehicle as excluding a pickup truck not used for business purposes. Exactly the opposite rules exist in Florida. The business purpose question is not determinative.

You have a couple of campers which collide in Florida. I find that those are rather frequently found on the road between here and Florida, having been there recently.

Now, under those circumstances, it would appear to me that the collision would be governed by Florida law and, therefore, the campers would be covered and the \$200,000 liability would be applicable under Florida law, but, again, the contract is made in Connecticut.

Therefore, the persons insured would only be able to demand \$100,000 coverage, or about half of the liability that is established in Florida.

Now, I think that this may pose a little more difficult conflict of law question, but I think it gives an example of what we run into when we are dealing with different laws respecting insurance and liability.

I am not talking about insurance regulation. That presents no problem. But don't you really find an insurmountable difficulty in cases where tort liability and insurance liability is based on very different standards in various States?

Secretary VOLPE. That is true today, of course.

Mr. ECKHARDT. It is not so true today, is it? As I understand, tort liability almost altogether is based on common law concepts which don't vary so greatly as questions involved with no liability insurance. We are moving into an entirely different field.

Now, there are, of course, on the periphery of negligence cases disputes, for instance, concerning proximate cause. One State might determine that there was proximate cause in a particular incident and another might not. But there you don't run into the question, then, of the related insurance liability. You are simply governed by the State in which the accident occurred and no grave injustice is done.

But here you might run into a basic conflict of principle in liability between the two States. Don't you recognize that as quite different than your present conflict questions in liability cases?

Secretary VOLPE. Yes, I do, sir.

Mr. ECKHARDT. Why, then, not abandon this business of leaving the question of liability, which would include both insurance liability and limitations of liability in the nature of tort, to the States and make this uniform, leaving to the States insurance regulation generally, that is, rate regulation and the things that States now traditionally control?

But with respect to the question of liability, if you asked for 50 different standards of all the ways between old-fashioned tort liability and no-fault liability, with the tremendous mobility of the American population of automobiles, it looks to me like you are asking for absolute chaos in this area of tort liability.

Does it not appeal to you that there might be a separation between the question of liability and that liability might become uniformly controlled by Federal law, but that certain questions respecting regulation of rates and those traditional controls of the insurance business might be left to the States?

Secretary VOLPE. With your indulgence, I will have Assistant Secretary Baker answer that.

Mr. BAKER. I might make a comment here. I think the point you have correctly brought out is the difficulties that arise in the wholly nonuniform 50-State system, and I don't think that uniformity is really what is being sought here by our position on reform. I think this is the precise reason.

Mr. ECKHARDT. Sure it is not being sought, but that is what I am afraid we will get.

Mr. BAKER. Then I have to submit that that is a matter of judgment, and I think the Secretary, of course, has expressed his confidence that the 50 States can, indeed, work out reasonable uniformity along the guiding principles that we have advanced and, hopefully, the Congress would endorse.

I think it is clear that to the extent that this does not all occur in all States at one time, there would be variations in the kind of insurance coverage that would have to be carried, extraterritoriality coverage, for example, as Dick Walsh suggested. But I do want to make clear, I think it is the expressed intention and desire of the administration that reasonable uniformity emerge in auto accident reparation systems across the Nation, and it is for these reasons that these guiding principles are in fact expressed in the Secretary's statement and in the study report.



I think if one discovered that the States were not moving at all, or moving in a highly fragmented or conflicting way, then, necessarily, as I think is implied in the Secretary's prepared testimony, further action might be required.

I just wish to underscore the fact that I don't think there is any desire on the part of anybody to wind up with a fragmented and conflicting system. I think the open question is the method of how you get there from here.

Mr. ECKHARDT. Let me point out one thing to you. I think we have only one possible example or experiment in this area and that is in workmen's compensation. I agree that it is not as broad as this question and it is somewhat different, but would you not agree that workmen's compensation is probably the closest analogous situation we have?

Mr. BAKER. I think it is a reasonable analogy, except insofar as, of course, the mobility of automobile traffic between States.

Mr. ECKHARDT. Now, in States today there is every level of coverage: there is a wide diversity of standards with respect to what constitutes compensable injury; there is an extreme dichotomy of rulings within the States. The reason this doesn't cause much difficulty is because workmen's compensation is generally contained within jurisdictional limits.

Mr. BAKER. Precisely so, sir.

Mr. ECKHARDT. The same is true of health legislation, but when we get into a question of tort liability with respect to vehicles, I think you must admit that the problem of conflict of laws, and the conflict of liability questions respecting insurance coverage, are absolutely tremendous: is that not correct?

Mr. BAKER. I would agree, and I repeat, I think that reasonable uniformity is the objective everybody has here, because to be sure, the express desire of the Secretary is to see the evolution or the development of a no-fault system—for example, I hardly think the system we have in Massachusetts, can be described as the ideal no-fault system in the context that the Secretary is here proposing.

Mr. ECKHARDT. This is just a liability coverage system; it didn't cover collision insurance?

Mr. BAKER. There is a variety of limitations in Massachusetts' plan as contrasted to what we are describing here. In short, the Massachusetts development is highly encouraging and a fine first step, but I don't think this represents that direction that we all wish to go.

I repeat, I think that if in the course of the next months suggested in the proposed concurrent resolution we cannot make the kind of progress and achieve the implied uniformity that your discussion properly highlights, then I think the requirement for further Federal action would necessarily be manifest.

Mr. ECKHARDT. Mr. Chairman, I would like to end what I have to say by simply expressing the view that it would be far better to engage in a more limited program that was federalized than to open up this sort of thing to the States. It seems to me that if we do this, the entire plan and the entire proposal becomes really a fraud on the public.

Mr. MOSS. Would the gentleman yield at this point?

Mr. ECKHARDT. I yield.

Mr. MOSS. Listening rather carefully here, I would suggest, Mr. Secretary, that you might want the opportunity to prepare a written

response to the questioning that was propounded by the gentleman from Texas. I think it has very broad implications to these hearings and to the ultimate actions of this committee.

I don't think, with all due deference to you, Mr. Secretary Baker, that you were responsive to the problem raised by Mr. Eckhardt. But I think you should be entitled to have clearly on the record a carefully considered response to the question.

Secretary VOLPE. I think the Chairman is very fair in his request, and we will certainly be very happy and delighted to do so.

Mr. Moss. Without objection, the record will be held at this point to receive the response.

(The following material was received for the record:)

AMPLIFICATION OF DEPARTMENT OF TRANSPORTATION VIEWS ON STATE-BY-STATE  
ADOPTION OF NO-FAULT AUTOMOBILE INSURANCE

It is true, as has been suggested, that all the States trace the ancestry of their tort law to the English common law. It does not at all follow, however, that their specific rules regarding tort liability are so common, or even so similar, a reasonable degree of countrywide uniformity can be claimed for the tort law-liability insurance reparations system.

The various guest laws of the several States is an obvious example of the dissimilarity and disparity rife today under the existing tort law reparations regime. Massachusetts has no guest statute but reaches the same result under its common law that the 34 States enacting statutes on the subject have reached (see *Marshall v. August*, 155 N.E.2d 201). Statutory guest laws, themselves, are by no means uniform: some permit recovery only for gross negligence or willful or wanton misconduct on the part of the host driver; others permit recovery in the event of intoxication, reckless driving or other deviations of greater gravity than simple negligence.

Moreover, rules for determining whether a non-paying passenger is or is not a "guest" vary widely from State to State, and frequently even cases within a single jurisdiction are difficult to reconcile. In some cases one can be considered a "passenger" rather than a "guest" even though he makes no payment for the ride, as where he gives directions for locating some person (see *Dorn v. Village of North Olmsted*, 14 N.E.2d 11 [Ohio]). In contrast, one may be a "guest" notwithstanding the fact that he has made payment, as where he has paid gasoline and oil expenses incident to a pleasure trip (see *Rogers v. Vreeland*, 60 P.2d 585 [Cal.]). In some States, it is held that the owner of a car cannot, as a matter of law, be a "guest" therein within the meaning of the guest statute (see, e.g., *Lorch v. Elgin*, 85 A.2d 841 [Pa. court applying Va. law]), whereas other courts hold that an owner may be a "guest" in his own car for purposes of the statute (see *Schlim v. Gau*, 125 N.W.2d 174 [S.D.]). Depending upon the case law of a particular jurisdiction, an infant in an automobile may or may not be capable of being a "guest."

The inter-spousal, intra-familial, charitable and sovereign immunities have created a maze of contradictory reparations rules, not only from one State to another but often within a single State (for example, where a State which has long followed the intra-familial doctrine barring suit by one member of a family against another member is abrogated by that State's highest court). Compare, for example, *Hastings v. Hastings*, 163 A.2d 147 [N.J.-1960], in which the court held that a parent was immune from a tort action based upon negligence brought by an unemancipated child with *France v. A.P.A. Transport Corp.*, 267 A.2d 490 [N.J.-1970] in which the same court abandoned the immunity rule.

It is not true that an automobile liability insurance policy written in conformity with the law of the insured's domicile necessarily and invariably adjusts to meet the tort law or insurance requirements of the place where the accident occurs. Certainly, where an insured's policy covers only the minimum limits of liability requested by his home State's financial responsibility law, the fact that another State where he had an accident requires higher limits under its financial responsibility law does not serve to increase the liability limits of his insurance policy. The widely prevalent Family Combination Automobile Policy provides:

"When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy." Allstate and State Farm policies contain similar provisions.

The phrase "certified as proof of financial responsibility for the future" constitutes a term of art referring only to the quite limited group of policies where the insured, because of some serious infraction, such as driving while intoxicated, or failure to satisfy a judgment, has been required to file with the State a policy "certified" by the insurer. All other policies are "voluntary" policies even though they are purchased to meet the obligations of the financial responsibility laws. Policy defenses available to an insure with respect to "voluntary" policies are not available under involuntary or certified policies.

Thus, it has been held that where the statute required only certified policies to contain an omnibus clause making a permissive user of the automobile an insured, a voluntary policy without such clause was valid and the conformity clause contained in the policy was inapplicable. (See *Moyer v. Aron*, et. al., 196 N.E.2d 454 (Ohio)). In *McCann v. Continental Casualty Co.*, 128 N.E.2d 624 (Ill.), an endorsement was appended to a voluntary policy restricting coverage to the name insured and relatives who were members of the household. One who was not of that class was operating the vehicle when it caused injury to another. The court held that the conformity clause was inapplicable and that the statute mandating an omnibus clause applied solely to certified policies.

It appears that even when a policy is certified as proof of financial responsibility for the future, the conformity clause brings the policy into conformity only with the law of the State to which coverage is certified. Thus, *Couch on Insurance*, Vol. 12, Sec. 45:727 states: "While the provisions of the financial responsibility statute are to be read into the contract of insurance, it is held that it is the law which granted the license to the owner or operator which thus becomes part of the insurance contract rather than the law where the accident is sustained, even though the policy is applicable to such foreign accident." In *Galford v. Nicholas*, 167 A.2d 783 (Md.), the certified policy written in Virginia was an operator's policy which, under that State's Financial Responsibility Law, was not required to, and did not, cover the insured when he was operating an automobile he owned. In this case the accident occurred in Maryland whose Financial Responsibility Law required an operator's policy to cover the insured while operating *any* automobile. Because the insured was driving an automobile he owned, his insurer disclaimed coverage. In upholding the insurer's denial of coverage, the court held that the Virginia law was controlling and that its Financial Responsibility Law rather than that of Maryland governed the insurer's liability.

It seems clear, therefore, that the accident victim's compensation under the tort law-liability insurance reparations system is dependent not only upon the tort law of the State where the accident occurred but upon the insurance and contract law of the place where the insurance contract was made or to be performed. Moreover, the insured cannot be certain that the policy which covers his tort liability in the State of domicile will cover his liability in another State where he may be fortuitously involved in an accident. For example, the law of his own State may not countenance an action in tort for negligence brought by a spouse against the other or by a child against a parent. Many policies written at a lower rate expressly provide that the liability coverage does not apply "to bodily injury to any insured or any member of the family of an insured residing in the same household as an insured." Such an exclusion would not be a matter of great concern to the insured in his home State and, indeed, such an insured might be absolutely certain that no such suit would ever be instituted by his wife or child in any State. Yet, there remains the possibility that in some State where contribution among tortfeasors is recognized, an insured with the family member exclusion in his policy might find himself brought into a third-party action in which the wrongdoer seeks contribution with respect to which the insured would have no coverage. In *Minners v. State Farm Mutual Automobile Insurance Co.*, 170 N.W.2d 223 (Minn.) State Farm's policy contained a family member exclusion, which was at that time valid in Minnesota. Suit was



filed against the wrongdoer who, in turn, filed a third-party claim for contribution. The insurer refused to defend and refused to pay the contribution judgment awarded against the insurer. The court held that the exclusion was effective and that although such an exclusion might have been motivated by the insurer's fear of collusion it was effective notwithstanding that collusion was negated by the bringing of the third-party action by a stranger. In the latter regard, the court said: "While our court and others have stressed the element of collusion as justification for the exclusion provisions, it may well be that premiums have been established in part by reference to potential exposure without regard to the element of collusion. In other words, it is entirely possible that the premium has been established at a reduced rate where those most likely to be passengers in the vehicle are not included in coverage." To like effect is *Urhammer v. Olson*, 159 N.W.2d 691 (Wis.).

Nothing herein is intended to suggest that the present fragmented, "crazy-quilt" design of reparations rules under the fault system should be perpetuated or that the States' failure to eliminate substantially the tort remedy in auto accident cases should be allowed to stand in the way of national reform. On the contrary, it is clear that State's reparations systems must contain a basic compatibility built around the theme of universal no-fault compensation of accident victims.

It also seems clear that to the extent that the tort remedy is retained either in H.R. 4994, H.R. 7514, or in State legislation, the ordinarily prudent and reasonable motorist will have to have third-party liability coverage as well as first-party coverage whether or not the applicable law actually mandates possession of the liability coverage. Moreover, since such liability coverages will, of necessity, be oriented toward the more serious claims involving heavy "pain and suffering" damages, predictably the rate structures referable to the liability coverage will focus on the exposure to catastrophic loss.

The essentiality of basic compatibility of the States' reparations systems with a common, no-fault denominator, does mean that every jot and tittle of every reparations statute be exactly the same. Inasmuch as no-fault reparations are contractual in nature, the law and public policy of the State where the contract was made or to be performed will govern rather than the law of the place where the accident occurs. Thus, the benefits required by the law of the insured's home State will be "portable" and will accompany him and the occupants of his car whenever he ventures into another State. Since the reparations needs of the insured are rather likely to be determined by the situation in the State of domicile, it is appropriate that they be applicable without respect to where the accident fortuitously takes place. Assume, for example, that an accident involving a New York motorist and a Wyoming motorist occurs in Wyoming and that each State's no-fault reparations law mandates a level of reparations commensurate with its own peculiar economic conditions and citizens' needs and that each of these motorists recovers benefits accordingly. It is difficult to perceive why the difference in the mandatory benefit levels under the respective statutes should constitute such an evil that Wyoming citizens should be compelled to support national benefit levels far in excess of their average needs or the New York should be foreclosed from mandating coverage above the national levels.

It would seem to be clear that if, in a particular State, hospital costs ranged downward from a daily rate of \$40 for a private room, the minimum requirement for medical expense coverage could be substantially lower than in another State where hospital private room costs were in the range of \$100 a day. Similarly, in an area where the average weekly wage was \$100, the level of compulsory disability income coverage could properly be set far below that of a State where the average weekly wage was \$200.

The fact that first-party reparations systems impact, primarily if not solely, on the citizens of the States legislating such systems means that States could be left relatively free to determine such matters for themselves without the consequences of their decisions being forced upon the citizens of other States.

Because of the present lack of experience under no-fault reparations systems, there are many unanswered questions about which specific approach is best. For example, there is the very important question of whether collateral benefit sources should be primary and first-party auto insurance benefits only excess. Some have concluded that the other benefit sources should constitute coverage while others have concluded that auto insurance must constitute the primary benefit source. Still others believe that automobile insurance should be primary

but that auto insurers should be required to provide a wide variety and range of deductibles so that a driver with other health benefit sources may effect some coordination of his reparation sources and obtain a direct and immediate reduction of his automobile insurance costs. Which, if either, of these approaches is best, can be ascertained most easily and certainly through experimentation by the several States.

Again, reasonable minds differ as to whether, or to what extent, owners of commercial vehicles would receive a "windfall" under a no-fault reparations system and to what extent, if any, equity requires that a heavier burden be placed upon the owners of commercial vehicles under a no-fault reparations system. Thus, some proposals would require the commercial coverage to be primary coverage with respect to every occupant of the commercial vehicle, including the driver, without respect to whether or not such occupant has coverage under his own policy. Moreover, it has been urged that in connection with a collision between a commercial and a private passenger vehicle, the commercial vehicle's coverage should be required to provide some portion of the compensation of the occupants of the private passenger vehicle. Others have concluded that such a cross-over provision is unwarranted or inequitable. Indeed, from the fact that H.R. 4994 contains provisions placing heavier reparations burdens on commercial vehicles while H.R. 7514 does not, one can only deduce the same reasonable minds have reached opposition conclusions at different times. Here again, States should be at liberty to experiment and determine through actual experience which approach is best or best suited to the needs and interests of its citizens.

Mr. Moss. Mr. Ware?

Mr. WARE. I have nothing at this point.

Mr. Moss. Mr. Carney?

Mr. CARNEY. I just want to compliment the Secretary for his fine presentation. But based on my experience in State government, I cannot agree with his conclusions. I think the people are demanding reform. If you leave it to the States, the results will be as my senior colleague described. However, I will listen and I will study this problem.

With the experience I have had, I am convinced we have to move on the Federal level immediately. To go back to the States would be procrastination, and further delay won't meet the problems of the people.

Mr. Moss. Mr. Stuckey?

Mr. STUCKEY. No questions.

Mr. Moss. Mr. Guthrie, do you have questions in order to complete the record?

Mr. GUTHRIE. Mr. Secretary, you are concerned in your statement with the ability of the bureaucracy at the Federal level to administer a program such as proposed in Mr. Moss's bill, H.R. 4994. But there is, in the Department of Housing and Urban Development, a Federal Insurance Administration which today administers three programs of Federal insurance; is that not correct?

Secretary VOLPE. I believe it is three.

Mr. GUTHRIE. I suppose it is not entirely inappropriate to consider the possibility that they might also, assuming that the subcommittee and the Congress deem it appropriate to pass Federal legislation, extend to the Federal Insurance Administration a responsibility in this area, since it already has the underlying expertise that would be necessary to administer such a program.

Secretary VOLPE. I am not aware of any other agency that would be any better suited to undertake such a program as the Insurance Administration in HUD.

Mr. GUTHRIE. That is all I have.



Mr. Moss. Mr. Eckhardt, did you have something further?

Mr. ECKHARDT. Mr. Secretary, do you have figures indicating the total amount or estimated aggregate reparations received by all persons in connection with automobile accidents?

I know you have got on page 9 of the report one that goes to the question of fatal accidents, I believe, and on page 11 a table that goes to nonfatal accidents. But is there a table here that takes into account both?

I suppose since you have got an aggregate of millions of dollars in both tables, one could be easily compiled by adding the millions of dollars figures.

Secretary VOLPE. We will be happy to present you with a composite table if one is not in the book.

Mr. ECKHARDT. That is on page 14?

Mr. Moss. Table 5.

Mr. ECKHARDT. Item No. 1 is net automobile liability payments, and item No. 3 is auto collision insurance. I imagine the kind of figure I am asking for, that is, property damages, as a result of collision, would be reflected in both of those areas; would it not? Auto collision insurance would be virtually all property damages, I assume, but net automobile liability payments would also include, say, 15 percent, 25 percent, or something like that, to property damage?

Mr. WALSH. Closer to half.

Mr. ECKHARDT. About half?

Mr. WALSH. Yes, sir.

Mr. ECKHARDT. If that is the case, you would have a figure of about \$3 billion of the total figure, which would be property damages alone; would it not?

Mr. WALSH. Yes.

Mr. ECKHARDT. Or approximately half of the total figure of \$6,470 million.

Have you given any thought to at least the inception of this plan, covering only property damages? That would embrace at least half of the total insurance costs and could at least make a pretty good dent in the total cost of adjusting claims, because that \$3 billion probably represents somewhere around 95 to 98 percent of all of the claims, does it not, these claims being relatively small and the other \$3 billion being composed of very large claims?

So the cost of insurance as reflected in processing cases would be largely in the \$3 billion related to automobile property damage; would it not?

Mr. WALSH. I can't give you a categorical answer to that, but the logic of your question is perfectly sound.

Mr. ECKHARDT. Would it be very difficult to establish what percentage of the total number of claims in number rather than in magnitude constitute claims wholly related to property damage and not in any manner related to any substantial liability?

Mr. WALSH. That would be very easy, and we would like to provide that for the record.

Mr. Moss. Would you like to hold the record?

Mr. ECKHARDT. I would like to hold the record for that purpose.

Mr. Moss. Is there any objection to that request?

Hearing none, the record will be held.

(The following information was received for the record:)

ESTIMATED AGGREGATE NUMBER AND VOLUME OF AUTO ACCIDENT LIABILITY CLAIMS BY  
TYPE OF CLAIM, 1968

|                                      | Percent of<br>claims | Percent of<br>dollars |
|--------------------------------------|----------------------|-----------------------|
| Property damage only.....            | 60-65                | 25                    |
| Bodily injuries only.....            | 3                    | 5                     |
| Property damage/bodily injuries..... | 37-32                | 70                    |
| Total.....                           | 100                  | 100                   |

Source: Estimated from 1968 Insurance Rating Bureau statistics for claim frequency and loss.

Mr. ECKHARDT. What I am getting at is that if a substantial part of the cost of insurance is the determination, for instance, in a telescoping accident, with, say, four cars involved on a highway in which real liability is an entire hypothetical, almost an imaginary situation—it is like determining some of the old decisions in the clerical law as to how many angels can stand on the point of a pin—if you could eliminate these costs and even if you did not touch the question of personal injury liability, could you not substantially reduce the cost of insurance today?

Secretary VOLPE. I believe the answer would be yes, sir.

Mr. ECKHARDT. Now, what I am proposing is the possibility of propounding a piece of Federal legislation that would be uniform with respect to all the States and would deal with this for limited concept and, frankly, Mr. Secretary, I have found it very difficult in a State legislature to quickly get, for instance, plaintiff's lawyer to agree to uniform proposals that might be quickly adopted.

It would seem to me that if we could eliminate some of the obvious difficulties and yet solve some of the very clear difficulties, we might get uniformity much more quickly than if we tackle the whole bundle of wax. I merely suggest that for your consideration.

Secretary VOLPE. I think it has merit and should certainly be considered, Mr. Eckhardt.

Mr. ECKHARDT. Thank you.

Mr. MOSS. Are there further questions?

If not, Mr. Secretary, I do want to thank you for your appearance here, for your statement, which is certainly stimulating in its reach, and we will be in contact with you within the next few weeks and perhaps the next several months.

Secretary VOLPE. It was nice to be with you.

Mr. MOSS. The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 11:35 a.m. the hearing adjourned, to reconvene at 10 a.m., Wednesday, April 21, 1971.)



# NO-FAULT MOTOR VEHICLE INSURANCE

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WEDNESDAY, APRIL 21, 1971

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

Our first witness this morning is Mr. Michael S. Dukakis from Brookline, Mass., and I would like to recognize our colleague, Congressman Harrington of Massachusetts, to present his constituent.

## STATEMENT OF HON. MICHAEL HARRINGTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. HARRINGTON. Thank you, Mr. Chairman and members of the committee.

Briefly, I have with me this morning as your first public witness the person who I think deserves the full credit for the enactment of legislation that is the first in the country, the so-called no-fault insurance. This legislation is the basis, I believe, for your hearings, and the basis for suggestions made that we consider the no-fault system nationally.

Having served with Mr. Dukakis in the Massachusetts Legislature and having supported his efforts on behalf of no-fault insurance in the mid-1960's. I don't think anyone deserves more credit than Michael Dukakis for persistence in a cause that was unpopular, misunderstood, and I think had little initial public support.

The fact that the no-fault system in a very short time since January of this year has worked as well as it has is the best testimony to the desirability of the idea and the desirability of his concept being seriously pursued by your subcommittee.

I am pleased, in both a personal way as a close friend of Mr. Dukakis' and as a Representative of the State of Massachusetts, where this has first been tried, to present to you this morning the author of no-fault insurance and the one who, I think, deserves the credit for what has been done to date.

I hope you find him as rewarding a witness as I found him a colleague in the Legislature of Massachusetts.

Thank you.



Mr. Moss. I would like to thank you and assure you that the Chair has learned of his willingness to appear with a great deal of appreciation, because we do regard his views as being very important to the work of this committee.

Mr. HARRINGTON. Thank you. If I could be excused. As you are aware, there is a Democratic caucus this morning which I must attend.

Mr. Moss. Yes.

#### STATEMENT OF MICHAEL S. DUKAKIS, BROOKLINE, MASS.

Mr. DUKAKIS. Thank you, Mr. Chairman and members of the subcommittee. My name is Michael S. Dukakis, and I am from Brookline, Mass.

I was for 8 years a member of the Massachusetts Legislature and was the Democratic nominee for Lieutenant Governor in 1970, running with Mayor White of Boston. Some people say we lost because I gave Governor Sargent his issue, but I gather you are going to have him before you tomorrow, and all I can say, in fairness to the Governor, while his predecessor, who appeared before you yesterday, never got around to supporting no-fault insurance of Massachusetts, I think our present Governor does deserve credit for supporting it. If it won him the election and if it was for the good of either party, so be it.

This does suggest, however, that insurance reform is not an unpopular subject nationally or at the State level, and I do say to you in all honesty that many people credit Governor Sargent for his willingness to espouse this legislation and to support it. While Mr. Harrington has very kindly given me a large measure of the credit, I must say to you that it wasn't just Mike Dukakis; it was a lot of members of the Legislature of both the House and Senate of Massachusetts and the Governor himself who deserve the credit collectively, because without all of them I suspect we wouldn't have gotten what we did in Massachusetts, and without what we did in Massachusetts you might not be considering a national no-fault system.

Mr. Chairman, I have prepared testimony for you and I really don't want to take your time by repeating it or reading it. Let me try, if I can, to summarize it and, perhaps, make an additional comment that may have come to mind since it was prepared for you, and I hope you will have some questions of me, as I am sure you do, because having gone through this for 4 long, and difficult, and at times frustrating years, I think I have heard all of the questions, and I hope, at least, I have responsive answers to most of them.

But I must say, in following former Governor and now Secretary of Transportation Volpe this morning, I had the feeling of *déjà vu* here. It is like an old movie being rerun.

Back in 1966 when I and my colleagues in the legislature filed the original Keeton-O'Connell bill, which, as you know, is the granddaddy of all of these proposals, we were faced with opposition not only from the insurance industry and trial bar at this time but from the then Governor himself.

I don't know what it is about the air down here, but I guess you have done something to him, because I gather he now supports this and, I gather, was willing to support something stronger than what in fact he proposed to you yesterday, had it not been for intervention or



guidance from the White House itself on the subject. But let me say at the outset that I simply don't understand the position of those who talk about a federalism or creative federalism that essentially involves letting the States do something in their own sweet time. I think there are times when the Federal Government must take leadership, because we don't seem to be able to act at the State level.

On the other hand, I think there are times when States can in fact be very valuable laboratories for experiments which may not yet be ripe for Federal action. We did this in the case of truth-in-lending in Massachusetts a few years ago, when Congress followed with national legislation. New York, under Governor Rockefeller, was a pioneer in the field of government support for the arts long before it came to be something which many of us concluded was a responsibility of national Government as well. I think in a very real sense New York led the way in that respect.

In your own home State, Mr. Chairman, the work of California in the field of air pollution control, particularly pollution from most motor vehicles, is something, I think, which all of us acknowledge as being a real contribution to national efforts in this area, and work which in fact primed, or stimulated, or hastened the day of national auto emission control legislation, and you are very familiar with that subject.

But the fact that one or a handful of States acts in the particular area and gives those of you here in Congress an opportunity to see the process unfold at the State level has never, it seems to me, been considered a reason for deferring Federal action indefinitely or for long periods of time where a Federal program exists, and the experience of a particular State is instructive and helpful.

Not only have State efforts in many fields, particularly in the area of motor vehicles, which involves such an obvious Federal interest and a massive Federal financial contribution, never have State efforts been thought to be the kind of thing that ought to postpone action. But, in fact, in the case of auto emission control and the air pollution field, you folks have now, in effect, denied us any further jurisdiction at the State level because of a legitimate interest. I think, in national uniformity, with the single exception of the State of California which had its rights preserved under that bill.

The States can no longer act in the vital field of emission control because of the interest in uniformity. It seems to me the same reasons apply in the case of auto insurance. It makes no sense, in my judgment, to come before this subcommittee and advocate a scheme whereby we will virtually be guaranteed a crazy quilt of State laws and regulations, many of them in conflict and many of them inconsistent, so that a motorist leaving his home State and crossing State lines would be faced with changes in basic rules of liability coverage, changes in the kind of insurance coverage which may be required and may be faced with serious gaps in his own protection as a result of this encouragement of diverse systems.

Now, there may be a middle point. I don't know. There may be something less than fixed and rigid Federal legislation which can give us the flexibility which conceivably might be valuable at the State level while at the same time insisting on some national standards.

The pattern of the Federal requirement of State legislation in accordance with certain guidelines subject to the approval of a particular Department, I suppose in this case the Department of Transportation, is one which is a very common one and, of course, not unfamiliar to you.

But, again, to say that after Massachusetts has acted—after 4 long years of study and struggle—to suggest that more study is needed at the national level after what must be one of the most exhaustive studies of any subject I have ever seen in the Department of Transportation's \$2 million study of this problem, or to suggest that 25 months, Mr. Chairman, after today, or next week, or next month, we are going to find any more than a tiny handful of States having acted in this area is, it seems to me, to be extremely unrealistic and unwise and irresponsible at the same time.

So I come before you this morning as one who was deeply involved in the passage of the Massachusetts bill to say to you that I do not believe our action ought to be an excuse for nonaction at the Federal level; that in fact I think our experience may be valuable, and to that extent, I want very much to share with you this morning the experience we did have and the questions that were raised, and we will try to answer them.

But anything short of Federal legislation which does require States to pass legislation which complies with certain basic national guidelines, in my opinion, at this point is not sensible, and a concurrent resolution and a look-see 25 months from now, in my opinion, is no answer to the problem.

Let me say that, Mr. Chairman, it seems to me quite clear that what the administration has done here is to attempt to create the illusion of support for reform without meaningful legislation through this proposal for a concurrent resolution and review 25 months from now while effectively getting itself by the next national election without jeopardizing the interests that don't want this bill, and I don't believe that is a sound or responsible policy.

Let me now, if I can, in concluding my statement to you, direct your attention to the bills before you. I do have some specific comments at the outset which may anticipate some questions you may have.

First, I would like to suggest to you that the concept of "catastrophic damage" as it appears in most of these bills as the threshold for the tort action is a concept which troubles me. I say that because if there is one thing I have learned from our experience in Massachusetts, it is that that threshold, however it is defined and measured, has to be as objective as it is humanly possible. Now, we use the amount of the medical bill, or certain other very objective physical conditions, as the threshold in Massachusetts.

The Keeton-O'Connell bill uses an amount of pain and suffering so large that it is clear that most of the small and medium-size cases can never reach it and it is beyond reach.

But the concept in these bills of permanent and total disability or even worse, the 70-percent partial disability concept troubles me. I think it will be a field day for the tort bar. I can see every case coming down the pike at least involving a claim for 70 percent disability, and if you give claimants the opportunity to make even that nuisance

claim in putting their claim through, then I think you are right back in the soup that has beset us in Massachusetts and in States like New York and others where our claim frequency is so high because of the nuisance value for these suits for very trivial injuries.

Secondly, in Massachusetts, Mr. Chairman, we met genuine public opposition to the idea of the automatic deduction of collateral sources. I can see it, because I have felt if we could reduce costs by riding, in a sense, on people's health coverage or wage security it made sense. But in public meetings, and I have addressed hundreds over the years on the subject, there was always this instinctive feeling that it was unfair to pay the guy next door who wasn't paying for health insurance more than you are paying me when I was contributing \$200 or \$300 or \$400 a year into some kind of a health insurance system. And no matter how many times we suggested to people that their rate would be lower if they had collateral sources, it never seemed to come through.

Because the rate savings under the Massachusetts plan, which as you know, is moderate in terms of its coverage and seems to be so substantial, if the dramatic reduction in claim frequency which we have experienced over the first quarter of this year is any indication, the rate savings are going to be more dramatic than they have been. Because of this, we concluded it probably made sense to accept this public feeling of unhappiness with the automatic deduction of health insurance and, rather, to provide that as a basic element in the no-fault policy medical expenses would be paid regardless of what kind of health insurance or health care the person was being provided with or providing himself, and that a deductible would have to be offered by the insurer which would permit the person with good health coverage and wage security to elect out of his no-fault benefit, and I speak to you from personal experience.

I am covered by a very good group health plan, something new in Massachusetts, which is like the Kaiser-Permanente plan in California. I have total coverage for myself and my family. I have elected the \$2,000 deductible under the Massachusetts policy. I don't want the present coverage and I don't want to pay for it, and the present system does let me elect out of it, if I want to.

Under the present plan you can decide that you don't want double coverage and that you don't want to pay for it. That is how we handled that coverage problem, and it might be something you might want to take into consideration when you review these bills before you.

Thirdly, as I read the bills, and I may be mistaken, it appears to me that it would prevent States from requiring any form of property damage coverage as a condition for operating a vehicle on its highways. I may be wrong, and if I am, what I am going to say, obviously, is irrelevant and ought to be disregarded.

But it does seem to me that there are provisions in the bill which seem to suggest that no State can require you, as a condition for operating a motor vehicle on its highways, to have anything more than the no-fault policy which is provided under these bills.

Now, most States, as you know, do either directly or indirectly, require people to carry property damage, at least if they choose to be insured, and in some of the compulsory States, though not my own, property damage is required as a part of the compulsory policy.

However, it does seem to me that certainly the States, if they choose, should be permitted to require property damage coverage.



I regret that we were unable to include property damage as a part of the bill in our Massachusetts bill. We had it in the House version, the so-called "triple option plan," which Professor Keeton developed. It was knocked out in the Senate and it never stayed in the bill. But a number of bills have been filed this year to include a first-party triple option system as a part of the overall Massachusetts plan. I think the chances for passage are extremely good. If that happens, we will have a more or less comprehensive system of first-party personal injury and property damage insurance in the State.

Finally, one small but significant improvement in the bills which you might want to consider and which we did not include in the Massachusetts bill, although it is a feature of the Keeton-O'Connell plan, is the payment of attorneys' fees if in fact a claimant's no-fault benefits are denied him or paid only in part by an insurer so that he is required to go to court to get his benefits. It would provide for interest, which I think is a good thing, and a stiff rate of interest, because I think insurers ought to be induced, if not compelled, to settle these claims and settle them quickly and fairly.

But one provision in the Keeton-O'Connell plan does provide that if you do go to court and you have to get a lawyer to represent you in court, that a judge will be permitted to award you fees which will be paid by the insurer. So, again, while that may or may not be a valid criticism or comment on the bill, it is something which was provided almost as a matter of right under the Keeton-O'Connell plan, and I think, under those circumstances, it made sense.

Those are about all of the comments I have on the legislation before you, Mr. Chairman, and on the general problem. But let me say again that the law is now in effect in the Commonwealth of Massachusetts. It seems to be working, although I would not for a minute suggest to you that our first 3 or 4 months of experience are, by any means, conclusive. I think public acceptance of the new system is high. I think the fears and the warnings of opponents of the bill that the public would reject this once it went into effect have not been borne out at all, and I think people are very happy about the fact that we have what they think is a more rational system of compensation with rate savings on the personal injury side which probably amount to \$100 million over what we would have had to pay in 1971 had we not put this new reform legislation into effect.

So I come to you from a State which does on the whole seem to be happy and pleased with our experience so far. I hope the experience will bear us out, but, again, may I say to you in closing that I do not think the fact that Massachusetts has acted or Connecticut is considering the bill or New York has one before it or Minnesota is considering it should be any excuse for postponement of some constructive Federal action this year.

(Mr. Dukakis' prepared statement follows:)

STATEMENT OF MICHAEL S. DUKAKIS, BROOKLINE, MASS.

It is a real privilege to appear before this committee this morning and share with you the experience of one who has been deeply involved in the fight for no-fault insurance in Massachusetts since that effort began in 1966.

Had it not been for the pioneering work in the field which was done in my home state and, in particular, the invaluable contribution of Professors Robert Keeton and Jeffrey O'Connell to that work, I'm not sure we would be here today seriously discussing the prospects of a national no-fault system.

In making such a statement, however, let me hasten to add that the fact that Massachusetts has already enacted into law the nation's first no-fault auto insurance law is no reason for suggesting that a long, tedious and tortuous state-by-state approach to the problem is either sensible or helpful. I have never understood the position of those who think that creative federalism means letting states do things for themselves and in their own sweet time. Rather, it seems to me it should mean a cooperative system under which federal and state governments work closely together and share the results of their work. At times this means leadership at the Federal level. At other times it may mean experimentation by a state or a handful of states which then gives us the basis for national action by the Congress itself.

This was true, for example, in the case of truth-in-lending. In that situation: only after Massachusetts acted did the Congress move for a national law. It was also true in the case of government support for the arts where New York's pioneering work set the stage for national action in that field.

Certainly, the matter of auto insurance reform has been studied enough. The Keeton-O'Connell study itself has been followed by numerous analyses of it and of its implications both by lawyers and the insurance industry. The Department of Transportation study is an exhaustive analysis of the problem. I think we know more than enough about the problem to take action now. Whether that action should be national in scope does not depend on the compiling of more information or the completion of still another consultant's report.

For these reasons, the action of the Nixon Administration in suggesting a concurrent resolution of Congress on the problem and a postponement of Federal action for another two years is curious and disappointing. It is curious because it seems clear that without White House intervention Secretary of Transportation Volpe would himself have recommended a national no-fault bill. It is disappointing because it seems inconceivable that more than a handful of other states can possibly take action on state no-fault laws during the next twenty-five months. On reflection, perhaps the administration's position isn't puzzling at all. What it has done is to attempt to create the illusion of support for reform without meaningful legislation and get itself by the next national election without jeopardizing certain special interests who are opposed to the no-fault concept.

Depending on the states to take quick and effective action on the problem simply won't work. The lobbies we fought in Massachusetts are just as tenacious in other states—and perhaps more so. The length of time that it will take for each state to adopt its own system of no-fault insurance promises little hope of an effective national no-fault framework. Moreover, there is an obvious and fatal flaw in the state-by-state approach. For if there is one thing that a national transportation system requires—particularly one so heavily financed by Federal contributions—it is a certain degree of simplicity and uniformity. People must be able to understand it. We must not develop a system in which there are gaps in coverage simply because a motorist has left his home state. It makes about as much sense to advocate a state-by-state approach to this problem as it would have to continue to leave motor vehicle safety regulations exclusively to the states. In fact, in one field—that of auto emission control—the Congress has effectively denied the states the right to act at all—presumably because of an overriding national interest in uniform national standards. Once again, it was a single state—California—which led the way in the emission control field—but the fact that it had acted didn't stop Congress from imposing national standards. I am at a loss to understand why the problem of auto insurance reform is in some way different.

There may be reasonable differences in opinion over the specific provisions of the bills before you, and I shall comment here today on some aspects of those bills. Furthermore, we might conceivably accommodate the views of those interested in encouraging further state experimentation by permitting the states some latitude in setting up their own plans but requiring approval of the Secretary of Transportation for each state plan and establishing a deadline for state action. To suggest, however, that a concurrent resolution and a look-see twenty-five months later is an answer to the problem is, in my view, unwise and irresponsible.

Let me turn now to the specific provisions of the bills before you. Since virtually all of them are identical in substance, I shall comment on them in general terms with only occasional references to the specific bills themselves.

1. I am somewhat troubled about the use of the concept of "catastrophic damage" as the threshold for tort actions. If there is one thing my own experience in Massachusetts has proved to me, it is that the threshold—however it is



defined and on whatever it is based—must be objectively measurable or so clearly beyond the reach of all but the most serious cases that it does not create even the remotest opportunity for nuisance suits. We based it in Massachusetts on the amount of the medical bill and certain other ascertainable conditions. Keeton and O'Connell suggest a very substantial amount of pain and suffering. Either one, I believe, is preferable to the permanent and total disability or seventy-percent partial disability concept incorporated in most of the bills before you.

2. In Massachusetts we met considerable citizen opposition to the automatic deduction of collateral sources. It may be that when we provide a comprehensive national health care and insurance system, an automatic deduction will make sense. So long, however, as individual health insurance varies considerably in scope and amount, it may be fairer and more acceptable to do what we did in Massachusetts—make no deduction for collateral sources but require insurers to offer deductibles which motorists can elect at their option if they have adequate health coverage and wage security.

3. As I read the bill, it would prevent states from requiring any form of property damage coverage as a condition for operating a vehicle on its highways. Most states do require such coverage, directly or indirectly. Moreover, I have found that property damage claims are at least as much a part of the problem as personal injury claims. I regret that we were unable to include property damage in our Massachusetts bill last year. A bill is now before the Massachusetts Legislature to include the so-called triple option system in the Massachusetts plan, and prospects of passage this year are good.

4. One small but significant improvement in the bills might be to provide that a claimant would be entitled to attorneys' fees as well as interest if a no-fault insurer refused to pay him benefits under the no-fault provisions of his policy and forced him to bring suit to recover such benefits. This would not only induce insurers to make such payments quickly and generously but would also overcome the problem of how a claimant pursues his no-fault claim effectively when an insurer unfairly refuses to pay him for legitimate medical expenses and wage loss.

I hope these comments are helpful as you consider these bills and any others that are presented to you. I do hope, however, that the position of the administration and of critics of a national solution and national standards will not deter you from taking action on this matter this year. While our experience in Massachusetts is by no means conclusive, I can report to you that the results of the first few months of operation have exceeded the expectations of those of us who worked so hard for the bill and that public acceptance of the new system appears high.

Mr. Moss. Thank you very much.

On the matters of attorneys' fees, in the bill which was introduced yesterday, which has not been available for study—it is H.R. 7514—in section 8, I believe, we have improved upon the language dealing with attorneys' fees over the language which was contained in H.R. 4994. You have this in section 8 on page 4 of that bill.

Mr. DUKAKIS. Looking at it very quickly, Mr. Chairman, I think you are right, and I think that takes care of point No. 4 in my analysis.

Mr. Moss. We removed the very high standards required where the insurer's denial of all or a part of the claim was fraudulent or so arbitrary as to have no reasonable foundation. That has been stricken in the redraft.

Mr. DUKAKIS. I think that makes sense.

Mr. Moss. You have lived with this a long time, and your State was the first in the Nation. Do you have any personal conclusions as to why it was possible in Massachusetts to make this move ahead of the rest of the Nation?

Mr. DUKAKIS. Well, there are a number of things. You are all familiar with how a bill gets through. There are personal factors. The presence of Professor Keeton, a mere public transportation token to and from the statehouse in Cambridge, was extremely important. We

had his counsel all of the time, and I think it was something that was very important.

I think the other thing was that Massachusetts was unquestionably Peck's bad boy in the insurance system. We have double the national claims frequency rate in the State of Massachusetts, 1.7 claims per accident, which is going some.

We had the highest average auto insurance rates in the Nation, largely, I think, because of our very heavy claims rate and the enormous number of nuisance claims which were being filed and paid by companies largely to get them off their backs.

Some people say that my fellow citizens were better educated in their rights under the tort system than the citizens of other States, and maybe that is true. But however you cut it, I think if any State was going to act in this field, it was going to be Massachusetts, because unquestionably we were faced with a very serious situation which threatened to become obfuscatory for many citizens, especially in the metropolitan areas.

I think we have also developed a tradition now of tough consumer legislation in Massachusetts. We have been, I think, ahead of most States in passing a great deal of what might generally be called consumer protection legislation. And I think we have a legislature and Governor and both parties that have been very strongly in favor of that kind of thing. So it is all of these elements combined.

But I have to say to you if you asked me to single out one, it was probably the fact that we were paying the highest rates in the Nation with the highest frequency claims rate, and something had to give. We just couldn't keep a situation going in which rates were going up 6 percent a year over a 15- or 20-year period and threatening to go higher.

Mr. Moss. Are you familiar with the Veterans' Administration disability rating system?

Mr. DUKAKIS. Only as it comes to the attention of legislators when an occasional constituent is faced with the disability problem. I know both Social Security and the VA disability rating systems are based on percentages.

Mr. Moss. I imagine the most objectively stated and most clearly defined standards of disability rating are those of the Veterans' Administration. They have been developed and refined over a period of many years. If those were to be adopted by DOT as the standards applicable under this act, then the 70 percent becomes much more meaningful, doesn't it, less subject to abuse?

Mr. DUKAKIS. It does, Mr. Chairman, and it is certainly far better than the current version I have seen of the Connecticut bill which deals in general pear-shaped terms about the question of disability.

The one thing I have to consider, however, and it is a judgment that you folks are going to have to make, is whether, notwithstanding some fairly clearly defined standards, either under the VA or Social Security or some other thing, you are offering an opportunity for the nuisance claims. If, in your judgment, the standards developed under the VA, for example, were they to be adopted by DOT, are sufficient and so clear that they avoid the possibility of even the nuisance claim, the lawyer's letter which says I have somebody here with a 70-percent disability, even though it is highly unlikely that if it ever got to the

courthouse anybody would think it was 70 percent—it is that nuisance value. Every time the claim is made it will cost the company something, so they would rather pay you \$500 or \$600 and get it off their backs than go in and fight over whether you are 70 percent or 30 percent or 20 percent disabled.

All I am suggesting to you is a word of caution on that basis, not that ultimately I think you would ever have any sudden surge of cases in which judges were awarding damages because of the 70-percent figure. It is the extent to which it induces the making of claims which simply, because they are made, have nuisance value and thereby induce settlement. But, again, it is a judgment.

Mr. Moss. Well, I think it is very timely to raise the point and get some discussion of it on the record here. It is a matter of concern to all who are interested in this legislative proposal. It is a matter that the committee will have to consider with great thoroughness prior to any action.

I would like to put on the record my concurrence with your remarks regarding the unlikelihood of any move at the State level within a reasonable period of time. I share, perhaps, your puzzlement over the fact that there seems to be, in this instance, a question of leaving it to the States even though we are admittedly dealing with broad national problems.

Automobiles are highly mobile by their nature, and I can be hit by a car from Massachusetts in Washington or in California as easily as I can by a car driven by a Californian in either Washington or California. You come to expect that a large percentage of the automobiles in almost any community will have out-of-State plates.

You mentioned the auto pollution, and we in California felt strongly enough about the standards that we had adopted. We sought an exemption as long as we maintained standards substantially ahead of those of the Federal requirement, but on aircraft emissions, we had standards prepared to go into effect, and I believe New York State had them also ready, and the Federal Government preempted this.

Then I would also point out the fact that a number of States were interested in imposing standards on labeling of cigarettes, which comes to my mind because I was involved in the legislative maneuvering on that, and there was a Federal preemption in that area.

So there are many areas where as strong a case or perhaps a stronger case could be made for reserving to the States the opportunity to deal with the problem in the first instance than here.

I do want to thank you myself for your appearance.

Mr. Broyhill?

Mr. BROYHILL. Thank you. I am not really a student on this subject. When you say you have had a savings of \$100 million, do you mean that the consumers have had a savings of \$100 million in the payment of premiums?

Mr. DUKAKIS. That is correct, if we had not acted in Massachusetts in 1970. We had imposed a rate freeze by statute for 2 years, and the Commissioner refused increased rates in 1967, Congressman. So by 1970, we effectively had held rates by regulation or statute at the 1966 level for 3 years. It was perfectly obvious to everybody that it would no longer be constitutional to continue to compel insurers to charge what they were charging in 1966 in 1971.



The insurance commissioner informed the Legislative Committee on Insurance, of which I was vice chairman at the time, that if nothing was done, he anticipated a rate increase on personal injury coverage of approximately 30 percent in 1971. We reduced it by 15. The new rate we received was approximately \$100 million less in overall premiums.

Mr. BROYHILL. To your knowledge, have the citizens had any problem if they have had accidents in other States because they have an insurance of a different type than that commonly in effect in other States?

Mr. DUKAKIS. We expect, although we don't require it, that as a practical matter each Massachusetts motorist will carry extraterritorial insurance, and nobody does it any differently. All of our insurance policies carry the usual extraterritoriality coverage, and so if I am driving in North Carolina, or any other place, I will be covered on the liability side in case I hit a resident of one of the other States or motorists of one of your States and injure him. At the same time I am entitled to draw on my no-fault benefits or no matter where I am in the country for my own injuries or injuries to members of my family who may be in the car. So we don't have any problem of protection there, but consider, if you will, the situation of one of your constituents who is now driving in Massachusetts, and this is one of the reasons why a national system is so terribly important. We can't compel your constituent to carry no-fault insurance, obviously. So we can't provide the benefits of no-fault coverage for them.

Now, while the motorists of Massachusetts continue to carry a residual liability policy which protects them in the event they injure one of your constituents operating in my State, you don't get the benefit of no-fault insurance. You have to go after my constituent on the liability side with all of the waste and expense and delay of that, particularly if you are an out-of-stater who goes back to his home State and 6 or 7 months later discovers he has a trial, so he has to come back to Massachusetts.

So we can't provide effective coverage for the out-of-State motorist. In effect, we have these two systems now working in the State, and we treat the out-of-State motorist—we have to—differently from the in-State motorist nad we don't provide him with no-fault benefits, because, of course, he is not a Massachusetts insured.

Mr. MOSS. Would the gentleman yield?

Mr. BROYHILL. I yield.

Mr. MOSS. Is there an extra cost for the extraterritoriality?

Mr. DUKAKIS. There is the same extra cost that one pays today for extraterritorial coverage.

Mr. MOSS. Would it be reasonable to assume that if we had a uniform no-fault policy throughout the Nation that costs for that portion of the package would be reduced?

Mr. DUKAKIS. I think it would be reasonable to assume that, Mr. Chairman. You wouldn't wipe the whole cost away, because, obviously, you are covering a risk which is not covered by in-State insurance, but I think with the reduction in administrative costs, the fact that the insurance mechanism doesn't have to treat people differently in different States, and so on, it would tend to reduce costs.

Mr. MOSS. Thank you.

Mr. BROYHILL. I am through, Mr. Chairman.



Mr. MOSS. Mr. Eckhardt?

Mr. ECKHARDT. In the case of a driver from Texas who engages in a collision with a person in Massachusetts, there is a limitation as to the amount of insurance required of the Massachusetts citizen with respect to the liability to the Texas driver, is there not?

Mr. DUKAKIS. That is correct, wherever he drives. Let me say this—

Mr. ECKHARDT. How much is that?

Mr. DUKAKIS. In Massachusetts all one is required to carry on the liability side is a \$5,000 and \$10,000 policy. We don't require him to carry anything if he is driving in Texas. As a practical matter, his extraterritorial coverage is in the same amount as his basic coverage. So if it is 50 and 100, it is 50 and 100.

Mr. ECKHARDT. I am talking about an accident in Massachusetts.

Mr. DUKAKIS. Five and ten. You are guaranteed a policy on the liability of five and ten.

Mr. ECKHARDT. Now, in a situation like that the Texas driver can go into court and sue on ordinary tort liability, can he not?

Mr. DUKAKIS. That is correct.

Mr. ECKHARDT. And what he may recover in court above the amount of coverage of the Massachusetts citizen then is any liability carried by the citizen himself; is that correct?

Mr. DUKAKIS. That is correct.

Mr. ECKHARDT. Now, on the other hand, if it were two Massachusetts citizens engaged in such a collision, is there a possibility of the Massachusetts citizen who might, at least theoretically, be found at fault as in the Texas case? Is there any possibility of his having to pay or being obligated personally for any amount?

Mr. DUKAKIS. Only if the threshold tests in the Massachusetts law are met—the \$500 medical bill, a fracture, the loss of a limb, impairment of sight of vision or serious scarring.

In those cases, he may be held liable for a full measure of tort damages as we know them.

Mr. ECKHARDT. Then, of course, those threshold requirements don't exist in the case of a collision between the Massachusetts and Texas citizen?

Mr. DUKAKIS. That is correct.

Mr. ECKHARDT. So, in effect, you must maintain two sets of law respecting liability in connection with collisions under the present circumstance because of the fact that insurance is determined on the State-wide basis rather than on a national basis; is that correct?

Mr. DUKAKIS. That is correct.

Mr. ECKHARDT. And in that way the Massachusetts citizen is not really assured of the kind of limitation of liability he would be were there a nationwide insurance plan; is that correct?

Mr. DUKAKIS. With respect to the out-of-State motorist, that is correct.

Mr. ECKHARDT. There is one thing that has troubled me a good deal with both the Federal act and Massachusetts' act and that is why should they not cover property damage?

Mr. DUKAKIS. That is a very good question. This may be an over-long answer, but it is a complicated problem. The reason why the Massachusetts law, Congressman, did not cover property damage has

more to do with the peculiar industry structure in Massachusetts than it has to do with what I would call genuineness in this discussion of what kind of insurance and what kind of a compensation system.

Frankly, it has to do with a small number of companies who are known as split-coverage companies in Massachusetts and have traditionally written the property damage on other coverages for the assigned risks who were guaranteed, up until we passed this new bill their compulsory coverage, but no more.

These companies are notorious for refusing to settle legitimate claims. I don't know why we have let them continue in the State, but we have, and they also have some political muscle, and for a variety of reasons which really aren't constructive here.

For that and a number of other reasons, the property damage section of the bill as it came out of the House was deleted in the Senate and never emerged.

Now, what we suggested and have proposed under the triple option bill is, I think, an ingenious and very sensible system on the property damage side. I don't know if you are familiar with that, but essentially what it does or what it would do is to give the motorist three choices: He could decide he did not want to have property damage coverage, and we would permit him to make that choice, but he could not make a claim against anybody else for property damage.

I think that makes a great deal of sense. If he doesn't want to contribute to the pool, then no recovery. That is option number one. For an older car, or somebody who is prepared to be a self-insurer, he doesn't hurt anybody but himself.

The second option would permit him to buy property damage which would compensate him only for the same reasons that he could now collect from the other guy under the liability system, but his own company would pay it to him. Essentially, it would be first-party coverage. There is nothing radical about that. It would cost approximately what property damage liability costs today, because it covers essentially the same risk.

The third and final option, which I suspect a substantial majority of the motorists in my State and most States would carry, because a substantial majority carry collision anyhow, would be a no-fault property damage coverage which would be indistinguishable from the present collision coverage, but it would be the exclusive method for collecting for property damage to your car.

Now, what does this mean? It means that the fellow who selects option 2 doesn't save or gain anything, because he is probably a property damage liability insured only and he probably doesn't carry collision, and the price to him will be no more or no less for what he is paying today for property damage liability.

To the fellow who is willing to take the risk of purchasing nothing and recovering nothing, obviously it is a total saving to him under option 1, and he isn't hurting a soul. For some of us who try to hang onto cars as long as they will survive, in the fourth or fifth or sixth year, it makes sense to run the risk, as long as we are not hurting anybody else.

Incidentally, there would also be a residual liability coverage here for the picket fence you knock down, but this is a very tiny and inexpensive coverage.

For the person who today carries collision and property damage under the triple option bill there would be a substantial saving to him, because he would no longer have to carry two coverages. Administrative costs would be reduced, and there wouldn't be the adversary system, and so forth.

Now, I have gone through all of this not only to point out to you that the triple option system not only makes sense, but that if the States or the Congress wanted to move in that direction, it wouldn't make sense to require property damage since you would be knocking out option 1, which, under this system, makes all kinds of sense. You are the person who would choose to insure himself.

On the other hand, if you can implement national standards in some way so as to induce or impel States to adopt this kind of system, it seems to me it would make sense, both for public acceptance and understanding and for other reasons, to induce people to carry property damage.

My own personal experience is that property damage claims, while there is less water in the system because there is no pain and suffering, obviously, which goes along with property damage, are the subject of plenty of public misunderstanding and unhappiness and they ought to be the subject of a sound and comprehensive insurance system.

Mr. ECKHARDT. There is another problem, too, and that is this: Since property damages are somewhat impractical to recover if your car itself is not insured and if you are depending on the liability of the person who hit you, you are almost compelled to get a lawyer to handle your case to have a reasonable chance of recovery and to try to find some personal injury which, of course, in turn, tends to increase the price of total insurance, because the question of fault and the question of damages are not separate packages. The two must be considered together with respect to settlement. So if fault is weak but damages are potentially high, the claim of an extensive amount of damages may make up for your lack of merits on your question of fault; is that not generally correct?

Mr. DUKAKIS. That has been the situation in Massachusetts to some extent, although generally they collect it on both sides, although it is not unheard of in Massachusetts for one to fix his fender with a personal injury payment.

Mr. ECKHARDT. On the other hand, if property damages were recovered, one would not have the incentive to find some personal injury in order to settle his case, if he was merely concerned in getting his car repaired?

Mr. DUKAKIS. Congressman, in the best of all possible worlds, that might be the case. I can only say to you that our experience in Massachusetts is that when there is profit to be made out of an insurance system, people chase it, and our experience, for example, I think, would bear out the fact that were we simply to require property damage in Massachusetts, it would not have done the job.

As long as the nuisance claims are around and you can get seven or eight or ten times your actual out-of-pocket loss—and it is so difficult to determine liability and the evaluation of pain and suffering—as long as you stick with liability on the personal injury aside in those small and medium sized cases, at least in my State, you are not going to do the job.



Mr. ECKHARDT. Well, I am not necessarily presenting the two as options, but it seems to me that the property damage situation is at least as important as the personal injury damage situation. There is roughly the same amount of money involved in each side of the insurance question, is there not?

Mr. DUKAKIS. Yes. I think the argument for property damage under a no-fault system is strongest if it is posed in the way you posed it, which is to say that it is very tough to get yourself a lawyer to chase a property damage claim, and I think we have to acknowledge that.

Mr. ECKHARDT. Doesn't this mean then that by and large a less high percentage of potential recovery exists in the case of recovery of property damages than personal injury damages.

Mr. DUKAKIS. I would say that is correct.

Mr. ECKHARDT. So if there may be fault in plaintiff's lawyers getting too much and overletting the insurance system on the side of personal injury—and I don't admit that or suggest it—but if that be true, then, on the other side of the picture, there is a possibility that the persons whose property is injured are getting too little to remunerate them for the damage done to their automobiles.

Mr. DUKAKIS. And certainly taking too long and having too much difficulty in getting the coverage as well.

Mr. ECKHARDT. Of course, in addition, the amount involved is relatively small and the number of cases involved must greatly exceed the personal injury cases.

Mr. DUKAKIS. I don't know what the comparison is in the terms of the number of claims, but certainly the amounts on the average are much smaller and run \$100 or \$200 or \$300. I think, per claim.

Mr. ECKHARDT. So the percentage of cost in processing an insurance claim with respect to this vast amount of property damage claim, equal in amount to the personal injury amount, must be much higher. The percentage of costs involved in the processing of the claim, as compared to the whole claim in the liability claim: is that not correct?

Mr. DUKAKIS. I would say that is correct. Of course, there are some elements in the investigation of a property damage claim, such as medical examinations, which aren't involved in the property claim.

An appraiser goes and takes a look at the car and makes an estimate. But I would think to the extent that personal injury claims tend to be in larger amounts, the percentage of administrative overhead to settle them probably is less.

Mr. ECKHARDT. Now, let me ask you this question: Of course, in the no-fault insurance plan that you have in Massachusetts and, also, in the proposed bill here, you eliminate the cost of establishing the question of fault, but you still have the question of damages, do you not?

Mr. DUKAKIS. Yes, sir.

Mr. ECKHARDT. And this would still involve essentially the same process?

Mr. DUKAKIS. I doubt it.

Mr. ECKHARDT. Why not?

Mr. DUKAKIS. I think companies are much more inclined to take a medical bill and pay it without further investigation. What worries them under the no-fault system is the pain and suffering multiple and the estimate of partial or total disability which the doctor is called upon to make and on which, in my opinion, he can't make a sound



medical judgment, because it is a nonsense term from the standpoint of sound medicine, or at least an extremely difficult term to define.

I doubt very much that in the vast majority of claims under the Massachusetts no-fault system and in which only no-fault benefits are elected, the companies will insist or expect to make medical examinations. I think they will accept the doctors bill and pay it, except in that rare case where they suspect that they have a doctor who just isn't submitting accurate bills consistently.

Mr. ECKHARDT. I understand that with respect to medical bills, but the definition of the term "economic loss" in this last draft of the bill on page 4 includes in section C a small Roman two:

85 percent of the monthly earnings at the time of injury or death multiplied by the number of months, et cetera, during which the injury or death results in the inability to engage in gainful activity substantially the same or similar to that engaged in prior to the injury or death.

Now, would you not have to determine the percentage of disability even under the no-fault provisions?

Mr. DUKAKIS. Not as I read the provision you have quoted, Congressman. I think, essentially what you are saying in plain English is that the system under the bill will pay 85 percent of the wage loss during the time the person is out of work. I think, again, except in unusual situations, the insurer, particularly in these small claims, will simply accept the fact of a loss of work and pay it.

You see, there is no incentive under the no-fault system to stay out, and the problem with the present system, at least as I know it and understand it in Massachusetts, is that if you have a system in which every week means another \$200 in pain and suffering—and I don't know what the rules of thumb are in your States, gentlemen, but in Massachusetts it is \$200 for total and \$100 for a partial, and if every week you stay out means a couple of hundred bucks over and above your out-of-pocket losses, there is an enormous inducement to stay out of work.

If all you are getting is 85 percent of your wage loss—of course, in Massachusetts we have included that provision, 75 percent of wage loss, and we don't pay you for your getting wage continuation or sick leave—then I think people will stay out for sound and legitimate reasons because they are hurt, and I think most insurers will accept that fact.

Mr. ECKHARDT. Perhaps I don't understand your plan. Let us take a comparative situation under workmen's compensation, for instance. Let us take the case of a man who has been employed by the telephone company in a relatively high-paid job, and he is injured on the job by virtue of falling from a pole. He is a craftsman with a relatively high rate of pay. Because of his injury, the job he must take after the injury is a job of a storeroom keeper, a very much lower rate of pay.

Now, let us erase the workmen's comp feature of this thing and consider the thing as if it were a similar injury by reason of an automobile accident, and I assume that could be the case. What would be taken into account in his ultimate recovery for damages under the no-fault plan with respect to the fact that he is reduced from a high-pay employee to a low-pay employee?

Mr. DUKAKIS. Well, in his case, I suppose, by the time you get through paying the medical bills and loss of wages or reduction in

wages, or anything of that nature, you would soak up the \$2,000 we give him so fast in Massachusetts that you would run out.

Mr. ECKHARDT. What has he got after that?

Mr. DUKAKIS. After that he has got a tort claim if he meets the threshold requirement. I can't imagine that guy falling off that telephone pole who, in effect, has been put out of his employment and required to take a much less skilled and lower paying job wouldn't make the \$500 medical bill threshold. I can't imagine that.

Mr. ECKHARDT. The \$500 medical bill would trigger the tort claim?

Mr. DUKAKIS. He wouldn't be denied his no-fault benefits. He would be entitled to that, but would it give him the right to sue the other guy for all of the tort damages.

Mr. ECKHARDT. Under the bill we have the triggering device as 70 percent partial. On page 13 the term "catastrophic harm" means (a) death; of course, that wouldn't cover the case I described; (b) other accidental harm resulting in (1) permanent and total disability—I suppose that wouldn't be included because his disability would not be total; (2) permanent and partial disability of 70 percent or more—in the case I am describing, that would probably be not the case; (3) disfigurement which is permanent, severe and irreparable.

So it looks to me like the case I have described would not fall under the catastrophic harm clause of this bill, but would under the Massachusetts bill with the \$500 triggering device.

Mr. DUKAKIS. I would agree with you.

Mr. ECKHARDT. Now, would you not feel that the case I have described should permit a tort claim?

Mr. DUKAKIS. I think that is a judgment that all of you are going to have to make. I don't mean to evade the question at all. Personally, I prefer the Keeton-O'Connell formulation of the \$5,000 pain and suffering figure as being a better standard than the medical bill. I do favor, Congressman, an area in which a seriously disabling injury will permit a tort claim. How do you define it, either by reference to disability, or the value of pain and suffering, or the medical bill, is something on which I think reasonable men can differ.

It depends, to some extent, on medical costs. We may find, heaven forbid, 10 years from now a \$500 medical bill is a trip to the doctor for an X-ray. If it is, we may have to bounce that figure up. But at least so far in Massachusetts it appears that the vast majority of claims that have been made under the Massachusetts system are substantially below the \$500 medical bill. I think the figure we were given was that 80 percent of the claims made in Massachusetts involved medical expenses of less than \$200. So we figured that \$500 was a pretty good compromise and one which marked, to some extent, a moderately severe injury, apart from a relatively trivial one.

But the Connecticut bill says \$1,000. New York, of course, doesn't base it on the medical expense at all. The proposed bill, at least the one that Governor Rockefeller has filed, will go all the way with no-fault and wouldn't permit tort claims, as I understand it.

Mr. ECKHARDT. There is one other thing I would like to clear up here and that is with respect to the provision I have referred to on page 4, section 14-C, roman ii. I gather that this measure of economic loss is comparable to the period of total disability with respect to workmen's comp cases; that is, the period before the bringing of the action

or before the person is returning to work, that it does not include any prospective disability.

MR. DUKAKIS. I am not sure I understand it to say that, Congressman. It does say that you are going to get 85 percent of your monthly earning at the time of the injury, multiplied by the number of months during which the injury or death results in the inability to engage in gainful activity substantially the same or similar to that engaged in prior to the injury or death.

I assume, and I am going a little far afield here, because quite obviously I am not as familiar with that draft as I am with my own law, that in that kind of a situation if you took a messenger job, or some much lower paying job, that the difference between what you were making and what you now make as a result of that disability would be a subject for compensation.

MR. ECKHARDT. Well, if that is the case, then you do run right back into the question I was asking before. You have the question of a medical examination with a prognosis with respect to the extent of disability.

In the case I described where a man is injured to a certain extent so that his earning capacity is reduced to, say—well, let us say it is reduced to half of that which existed before, he wouldn't have to fall in the catastrophic grouping to recover. He may recover under this act, and there may be a determination of his partial disability which will result in his recovering 85 percent of his loss during a period of time which may extend beyond and past the time of the actual settlement.

MR. DUKAKIS. I think that is correct, and in that case, I haven't any doubt that there would have to be some kind of independent or objective or otherwise insurance company ordered medical examination. I am not troubled with that, because I think statistically the case you gave me makes up a very tiny minority of the total claim volume, at least as we have experienced it in my State.

In that case somebody is going to have to make a determination, however difficult it is as to precisely what he has lost and what his disability is and how long is was justifying his staying out of work and to shift to a less demanding job.

I am not troubled about that, because I think you are talking about a very small number of cases and at least, as far as our experience is concerned in Massachusetts, I say to you, and I think I can accurately, that 80 percent of our cases involve medical expenses of less than \$200. That was the figure prior to the time we moved to no-fault.

I think you get some idea of the vast number of claims which would not involve these very fine and difficult determinations.

MR. ECKHARDT. Well, in other words, then you have the same determination required in that kind of case that you have in a tort case except the question of pain and suffering and more or less intangible coverage that is not described here; is that correct?

MR. DUKAKIS. That is correct, and in those cases I think it is worth spending some time and money to try to make that determination. I don't think it is worth doing it in this enormous number of nuisance claims that we are faced with.

MR. ECKHARDT. Well, I am not really purporting to discredit the measure. As a matter of fact, I think this is necessary, but I merely wanted to find out precisely what is involved here.



Now, if this person does lose certain other elements of recovery which are eliminated from this bill, why should he also lose 15 percent of his losses here, which is the 85 percent?

MR. DUKAKIS. Because this is a tax-free benefit, and if you are trying to make him whole in fact, the 15 percent figure, which I think was probably extracted from the Keeton-O'Connell bill where it first appeared, was an attempt to approximately hit a rough kind of minimum tax payment, which he would not be getting anyway in the final analysis.

We went beyond that in Massachusetts in making it 25. By adding 10, we assumed we might get him back to work a little faster. I personally favored the 85 percent and not the 75. It is essentially the tax-free nature of the benefit which I think, Mr. Chairman, produced the 85-percent figure, although there may be some other reason.

MR. ECKHARDT. Thank you.

MR. MOSS. Mr. Ware?

MR. WARE. Two quick questions. While your experience is limited, is there any indication to date that where a medical fee might have been \$435 in order to benefit this long-time patient the bill comes in at \$501?

MR. DUKAKIS. It is too early to tell. Frankly, it was one of my fears when we moved to the medical bill threshold that we would suddenly develop an awful lot of \$501 medical cases. But, as I indicated earlier in my testimony, there are so many cases, apparently, which don't even give you the opportunity to get up there, at least under our previous experience, that so far, at least, we haven't experienced that.

Also, let me say that I think there is one thing about the present system which I think is an unfortunate thing—others might say it is a good thing—but I think if you have an auto case, you tend to get overmedicated. It is three X-rays instead of one, and some people may say if the doctor thinks it ought to be three, that is a good thing about the present system.

It provides a generous measure of medical treatment, because there are insurance benefits to pay for it, but I think the present system, because of all of these inducements to get that medical bill up, because of the pain and suffering multiple as a rule of thumb, in these cases we are getting excessive costs because of the very nature of the system.

If you have a system as we do now in Massachusetts, where you were simply compensated for your straight medical expenses, I think that inducement to build up the medical bill and overmedicate and over-treat is cut down.

In any event, the short answer to your question is, so far we haven't been seeing any \$501 medical bills.

I would say to you, as a practical matter, if you have somebody who is seriously enough injured that the medical bill is \$460 and he wants a couple or more diathermy treatments to get him up to \$500, I am not unhappy with the situation, as a practical matter. And from the standpoint of how the system operates, it doesn't bother me. If it is a serious injury and if there is certain liberalism of treatment, it is going to be a small minority statistically of the total claims.

But people are very ingenious, and your own experience with the Internal Revenue Code is instructive on the many ways people can find to move around and through things.



We may find this developing, in which case we are going to have to either move to another standard, the kind you are considering, or we are going to push up the medical bill, the threshold.

Mr. WARE. The answer to my second question is, of course, answered in my first question.

Mr. Moss. Thank you.

If there are no other questions, I want to express our appreciation for your appearance here this morning. It has been very helpful to us.

Mr. DUKAKIS. I will be happy to cooperate as best I can.

Mr. Moss. Our next witness is Mr. Benjamin Mackoff, administrative director of the Circuit Court of Cook County, Ill.

### STATEMENT OF BENJAMIN MACKOFF, ADMINISTRATIVE DIRECTOR, CIRCUIT COURT OF COOK COUNTY, ILL.

Mr. MACKOFF. Good morning, gentlemen. I think you have the statement I have prepared and submitted to this committee, so I won't take your time, also, in going into the generalities and the problems that I expressed in that statement.

I am here as the administrative director of the Circuit Court of Cook County, Ill. I address myself to the problem, the solution of which you are addressing yourself to. I am also the president of the National Association of Trial Court Administrators. I want to make clear that I do not speak for the association when I address myself to this problem, because the association hasn't taken the matter up.

We are having a conference next week from the 25th on through the 28th. We have scheduled a discussion of the no-fault concept at that time, and I expect by the time that the conference ends, the association will, by resolution, address itself to the problem. But, again, as I speak to you this morning, since we have taken no action on it, I cannot speak for the association.

I also call to your attention an editorial that came to my attention this morning as I read the editorial page of the "Wall Street Journal" this morning, April 21, and it addresses itself to the problem of judicial inertia and the problems of delay in the courts.

The Circuit Court of Cook County is by organization a new concept, a concept of a single trial court, of complete and original jurisdiction. The voters of Illinois in 1962 by an amendment to our judicial article of the State Constitution set up a three-tier court system which was extended throughout the State; that is, this is only one court with three tiers.

The Circuit Court of Cook County, which came into being on January 1, 1964, took over the workload and the facilities of some 243 courts that were present in Cook County prior to that time. We had a circuit court and superior court and probate court and county courts and juvenile courts. We had municipal courts and village courts and township courts and justice of the peace and magistrate courts. All of these courts became one on January 1, 1964. In doing that, we serve now a population of 6 million people, with a complement of approximately 253 judicial officers, judges and magistrates together. I understand that makes us the largest single trial court in the United States under one administrative head.

Our administrative head is Judge Boyle, who is the Chief Judge, and he has the authority under the Constitution to provide for the divisions of the court and assignment of judges throughout the division.

One of the main aspects of the constitutional revision, one of the selling points, was the complete flexibility which it gives to the administrative judge or chief judge to assign judges from the various divisions and districts of the court to other divisions of districts of the court as they may be needed.

It was spoken by the proponents of the amendment in 1962 that this would solve the problem of personal injury cases which were flooding the courts at that time, because it gives the chief judge authority to assign as many judges as are needed to the problems of the personal injury cases which were at that time increasing in the combined circuit and superior court of Cook County, which were the major cases, at a rate of about 5,000 a year.

In 1964, when I was appointed administrative director of the court and we took over the court, this 5,000 a year annual increase was in its fourth or fifth year.

At that time in 1964, we were trying cases of 1954; that is, some of the cases had a 10-year wait between the time of filing and the time of jury verdict.

In the first 3 years, that is, until the end of 1966, the personal injury cases in the law division, which handled at that time cases where the amount claimed was \$10,000 and above, reached a peak in 1966 of approximately 51,000 cases, and the trial time between filing and verdict was approximately  $5\frac{1}{2}$  to 6 years, or approximately 68 months.

Now, there have been inroads against that tremendous delay in court so that at the present time there are approximately 30,000 cases pending in the law division now that the amount claimed has been raised to \$15,000. So we have reduced approximately 40 percent the cases pending. However, the time or average time elapsed between filing and trial at the present time is approximately  $4\frac{1}{2}$  or 5 years, which is still a great deal of time and too long for the trial of any case, be it civil or criminal.

We have done this by a series of what we thought were bold and innovative measures, beefing up our pretrial division, adding certain requirements for the filing of cases, setting up empaneling rooms for juries so the jury can be set up as a package to the judge who is ready for trial, and other methods for trying to stop the enormous amount of cases that had to be tried before the court.

I call your attention to the last paragraph, or just before the last line in today's Wall Street Journal, in which President Nixon describes the feeling of those where he says:

All this sends everyone in the system of justice home at night feeling as if they have been trying to brush back a flood with a broom.

That is the system we find ourselves in. We find we are using up-to-date and modern management methods that apply to an essentially archaic and inefficient system.

The trial of jury cases, personal injury cases predominantly, takes up about one-third of our judge time. Of the  $4\frac{1}{2}$  million cases which are terminated each year—and I include traffic cases among that,

which are a great number of cases—approximately anywhere between 18,000 or 20,000 of those, which is a very small percentage, are personal injury and law jury cases.

Yet, for the small number of cases, this takes up some 60 judges, which is half of our elected judges, and additional magistrates, which is about one-third of our total judicial personnel.

We do have other areas of the court as a unified court of original jurisdiction which demand our attention. We have criminal cases where persons are incarcerated and waiting for trial which we feel should be taken care of speedily, and as a matter of fact, there is a provision in the law in Illinois that such persons have to be tried within 4 months of the time of their arrest, unless they have made motions for continuance or they walk out of the door and they cannot be tried again.

In addition to that, we have many juvenile matters. The rate of juvenile crime and juvenile cases which are filed in the court has increased tremendously.

We have matters which are the result of marital distress, and matters which come to us by divorce and separate maintenance, annulments, and various problems that come after divorce, the ward or custody of children and support, which are also immediate and demand judge time.

But we find that of the judge time or the judges assigned to the personal injury law jury cases, statistically only about 3 percent of our cases go to jury verdict, and the time which is charged against the system for the time between filing and jury verdict, the time that is displayed in the newspapers indicating the breakdown of justice, only applies to these 3 percent of the cases. The other 96 or 97 percent of the cases are settled or otherwise terminated somewhere between the time of filing and jury verdict. This can be borne out by our computer runs which show that as far as inventory of cases in our law division, the average case law jury is 27 months, which is a far cry from the 60 months of the law jury case.

But our judges are not trying cases. They are sitting, for the most part, as umpires while the lawyers haggle about who should pay what and whether it should be \$800 or \$1,100; and the judge, who is judicially trained, a man learned in the law, a highly paid public official, says to the two lawyers, "Why don't you split the difference down the middle?"

So the one lawyer says, "OK, we will give you \$950," and the other says, "We will take \$950," and the case is ended. This \$100,000 claim is ended because of the lawyers agreeing, because they were brought before the judge and that they will agree on the \$950 settlement.

Somehow it is my feeling that one-third of our judicial personnel engaged in such a practice is a tremendous waste of judicial manpower, particularly when other divisions of our court cry out for judicial attention, particularly the criminal, with all of the new requirements of due process that have been set forth by the Supreme Court, particularly the juvenile, where the increase in crime and the problems that are attendant to that, and the fact that, in my estimation, there will be in the near future many other types of cases that will come to the courts for decision.



We are having more class actions now brought by various classes of people to enjoin or mandamus somebody to do something for the public good or private good.

We have many more third-party actions where the suit is brought against somebody and somebody brings in somebody else and, therefore, the case becomes two or three cases all joined into one.

We will probably have situations in which more public concern and more public legal committees will be formed to take action in matters of landlord and tenant and in the matter of public housing, or adequate housing, matters of pollution, and other environmental controls. These are weighty problems and will have to be decided by the court in landmark decisions, in making extensive hearings and new attitudes, new law. These all deserve our attention and deserve judicial manpower.

Now, it can be suggested that we have more judges.

What we did in 1962 in setting up this new court system was to give us more judges and yet, because of the increase in the other areas of the law, we have had to take judges from personal injury that were originally assigned to personal injury and we had to take them away and assign them to more immediate problems.

What we found in our municipal department was when they had cut-down on the number of cases that were pending in the municipal, all of a sudden they had an upsurge in the filing. When people felt they would get to trial within a reasonable time, then the amount of filing increased, and there we are with the same old problem all over again.

We had an estimate from one of the defense counsels or counsel defense lawyers that only one out of every 10 cases that involves a claim actually is filed in court.

Now, you can see that if instead of 90 percent being settled, the insurance companies decided to settle only 80 percent, while it may be a small difference for them, it would be a tremendous difference for us. It would be a 100-percent increase in the cases that would be filed in court, and we would be inundated, as we are, to a certain extent, at the present time.

As I say, I am addressing myself to the problem. I am sure that you gentlemen are well aware of the problem, but I speak from my own personal experience as a lawyer and as a court manager. The tort system, as it exists, simply is not working. We need a new bold and creative attitude to explore the possibilities which might reorder our priorities. I think that one of the solutions, or possible solutions, is the no-fault insurance concept and the bill that you have presented to the Congress. On that basis, I feel inclined to support your bill.

I thank you for your time and attention, and I am here to answer whatever questions you may have in this regard.

(Mr. Mackoff's prepared statement and Wall Street Journal editorial of April 21, 1971, follow :)

STATEMENT OF BENJAMIN S. MACKOFF, ADMINISTRATIVE DIRECTOR, CIRCUIT COURT OF COOK COUNTY, ILLINOIS

In the past 20 years, the nation's courts have been deluged by civil litigation arising out of automobile accidents. This has occurred because of the staggering increase in motor vehicle registration and because courts have historically provided the only forum in which to seek compensation.

As long as the case load was manageable, the courts were able to provide adequate and speedy justice in such matters and still dispense services needed in other areas of the law. But in most metropolitan areas of this country today, the



time it takes to get to trial in personal injury cases is measured in years. Despite the implementation of a variety of techniques to expedite litigation, the delay continues at an increased rate. Those courts that have kept pace with the steady rise of such filings have done so only at the expense of other vital areas of the law which then suffer from similar delays, or worse yet, "bargain basement justice".

Delay in the courts is becoming an embarrassing contradiction to our entire system of justice. It deprives citizens of a basic public service; lapse of time frequently causes deterioration of evidence; delay may cause severe hardship to some parties and affect litigants differentially; and, it generally brings to the entire court system a loss of public confidence, respect and pride.<sup>1</sup>

As Justice Ulysses S. Schwartz of the Illinois Appellate Court stated in *Gray v. Gray*, 6 Ill. App. 2d 571 (1955):

The law's delay in many lands and throughout history has been the theme of tragedy and comedy. Hamlet summarized the seven burdens of man and put the law's delay fifth on his list. If the meter of his verse had permitted, he would perhaps have put it first. Dickens memorialized it in *Bleak House*, Chekhov, the Russian, and Molière, the Frenchman, have written tragedies based on it. Gilbert and Sullivan have satirized it in song. Thus it is no new problem for the profession, although we doubt that it has ever assumed the proportions which now confront us. "Justice delayed is justice denied," and regardless of the antiquity of the problem and the difficulties it presents the courts and the bar must do everything possible to solve it.

And yet there is very little incentive for the speedy disposition of a pending personal injury lawsuit under the present system. Neither the culpable defendant nor the plaintiff with a very tenuous nuisance claim has reason to hasten the day of reckoning. The insurance company makes money during the delay on its reserves—the money it does not pay out as claims. The defense lawyer gets paid by the thickness of his file—the amount of work and the number of court appearances he has made. Even the plaintiff's lawyer has sound economic reasons for not wanting his case disposed of. If the plaintiff's lawyer accumulates a certain number of dispositions, his fees are greatly diminished by taxes and, I am told, the prudent lawyer will always want an inventory or backlog of pending cases for the proverbial "rainy day".

Other than the courts prodding the cases through to conclusion, there is generally no real effort by any of the participants to gain a measure of speedy justice. Some courts even refuse to hurry the matters along, preferring to wait until the lawyers indicate that they are ready to proceed.

And other abuses have grown with the system. A few well-publicized "big verdicts" have led many of the public to believe that they are entitled to enormous sums for minor injuries or could receive such sums if they are represented by a lawyer who will "build a case" for them. And there are always those few who will prey on these expectations. Unscrupulous lawyers, attracted by large contingent fees solicit cases personally or through agents, contrary to the ethics of the legal profession. They sign up accident victims by promising fantastic sums even while the would-be client is stretched out on the street or en route to emergency surgery. These same lawyers corrupt police officers and firemen, who may be the first to the scene of the accident, to direct them to the victim for a fee and even to color their testimony if it become necessary. "Ambulance chasing" induces some clients and doctors to exaggerate injuries and tradesmen to inflate bills or approve such inflated bills. The system, at its worst, encourages accidents to be contrived and injuries to be fabricated to defraud the unsuspecting defendant or the unwary insurance company.

Nor are the unscrupulous lawyers the only culprits in the system. Eyeing the large sums spent annually for casualty insurance premiums, many investors have organized insurance companies for the sole purpose of paying themselves high salaries while contesting claims, so as to milk the company until it is insolvent.

One can imagine the shock to the defendant driver when he realizes that rather than being insured against a claim, he must pay the judgment out of his own pocket, or even be assessed an additional one year's premium to pay for claims against others defrauded by the same insurer. And what of the tragic consequences to the severely injured plaintiff who discovers that the uninsured defendant has insufficient funds to pay even a portion of whatever judgment may be rendered against him.

<sup>1</sup> Delay in the Court, by Buchholz, Kalven, Jr., and Zeisel.

Others have pointed out the high cost of acquiring casualty insurance and the difficulty of obtaining renewals. But an often overlooked problem is the cost to the taxpayer of maintaining the system. It has been estimated that it costs approximately \$250 per hour to try a jury case before adding attorney's fees and witness expenses. That cost is hardly less for non-jury court time. If one considers that many courts throughout the country assign a substantial portion of their trial bench to the processing of automobile accident cases, one may appreciate the handsome contribution which the taxpayer makes.

And what does the taxpayer get in return for his tax dollar? An orderly and effective litigation of actual disputes? On the contrary, it is a rather distressing symptom of the abuses now ensnaring the courts that a very low ratio of cases is actually decided by a trial of the issues. In some courts that ratio is as low as two or three per cent. This statistic indicates to me that the court is being used merely as a forum for the claims adjusting bargaining process. The judge becomes an umpire between two parties who do not really seek a determination of the legal matters involved. The court, sacrificing its traditional function of deciding actual disputes, simply oversees the haggling between lawyers of whether or how much to pay to whom. In no uncertain terms, the taxpayer is subsidizing insurance companies to negotiate its own claims within public facilities and on judge time.

All this occurs at a time when new and important matters are being thrust upon the courts for decision. Expanding constitutional requirements of due process have added new aspects to criminal proceedings and demand a more formal trial in juvenile cases. Third party and class actions are now commonplace in many areas of civil litigation. New remedies available for consumer and environmental protection, as well as for welfare recipients and apartment dwellers, represent new demands on court time.

Judges are key human resources of our nation's courts, whose time must be allocated consciously to reflect our country's priorities. The heavy burden of automobile accident litigation may be relieved in some measure by providing the courts with more judges. But for the moment, the litigation of these cases consumes a disproportionate and totally unjustifiable amount of judge time. There is no question but that the continued over-emphasis on personal injury cases will divert attention from other deserving areas of the law.

In my judgment, the extension of tort remedies to automobile accident victims is in no way vital to our system of government. It is simply a convenient device conceived in the 13th and 14th centuries as an extension of the laws of trespass and handed down from the English common law. While it is important that victims of motor vehicle accidents be compensated in a just and efficient manner, it is not critical that this system of compensation operate as part of our judicial system. In certain respects, the courts are an inappropriate forum. Abuses and inefficiencies abound in the present arrangement. For these reasons—that the continued maintenance of this scheme of compensation not only fails to serve its own ends effectively, but also impairs the disposition of litigation more vital to our liberties, a reordering of priorities is called for.

The time has come for new and bold measures to compensate automobile accident victims which will allow the courts to more effectively serve the public. One such way may very well be through the adoption of the legislation now pending before this subcommittee. Congress has seen fit to legislate certain minimum highway safety standards to minimize the risks of driving. Surely Congress has the authority to set down minimum standards for compensation to accident victims to mitigate the harsh consequences of accidents that do occur.

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[From the Wall Street Journal, Apr. 21, 1971]

#### EDITORIAL—REVIEW AND OUTLOOK

##### JUDICIAL INERTIA

When the Judicial Conference of the United States voted to reduce the size of juries in federal civil trials below the tradition 12, some of the newspaper stories discussed how the practice began.

There's nothing in the Constitution or U.S. law to dictate the size of juries, the idea was merely carried over from English common law. And how did the practice originate in Britain? Well, legal historians aren't sure, but they think the idea may have stemmed from the 12 Apostles of Christ.

Jury size hasn't been the only unchanging aspect of American justice; the system has long shown a distressing inertia, an unwillingness to adjust to a rapidly changing world. Respect for the past is one thing; a refusal to face the present and future is quite another.

In a recent speech President Nixon commented that "the founders of this nation wrote these words into the Bill of Rights: 'The accused shall enjoy the right to a speedy and public trial.' The word 'speedy' was nowhere modified or watered down. We have to assume that they meant exactly what they said—a speedy trial."

Yet what happens? "In case after case, delay between arrest and trial is far too long," the President said. "In New York and Philadelphia, the delay is over five months; in the state of Ohio, over six months; in Chicago an accused man waits six to nine months before his case comes up."

Such delays, which often are further extended by the slow pace of appeals procedures, can injure the community as well as the accused. When trials are held up witnesses may die or disappear, so that there can be no accurate determination of where justice really lies. "Justice delayed," as Mr. Nixon put it, "is not only justice denied—it is also justice circumvented, justice mocked, and the system of justice undermined."

The President strongly supported the judicial reform efforts of Chief Justice Warren E. Burger. Neither man, of course, wants speed alone; with greater speed also must come increased efficiency.

The reduction in jury size, which was suggested earlier by Mr. Burger, appears to be a step in the right direction. The change, which may require Congressional approval, will make civil jury trials less costly, cumbersome and time-consuming. For the present the Judicial Conference does not propose any change in juries for federal criminal trials, but such a move well may be considered if smaller juries work well in civil cases.

Mr. Nixon endorsed other measures that could lead in the same direction. Minor traffic offenses, loitering, drunkenness and other "victimless" crimes could be taken out of the courts and handled by other agencies.

"We should open our eyes—as the medical profession is doing—to the use of paraprofessionals in the law," he said. "Working under the supervision of trained attorneys, 'parajudges' could deal with many of the essentially administrative matters of the law, freeing the judge to do what only he can do: to judge."

Many of the needed reforms ought to be obvious: Wise use of computers, more care in selection of judges and other judicial personnel, simpler administrative procedures. Since justice is dispensed by the states as well as the federal government, the President suggested that they set up their own center, similar to the federal one established four years ago, to develop ideas for streamlining justice.

"Overcrowded penal institutions, unrelenting pressure on judges and prosecutors to process cases by plea bargaining . . . clogging of court calendars with inappropriate or relatively unimportant matters—all this sends everyone in the system of justice home at night feeling as if they have been trying to brush back a flood with a broom," Mr. Nixon said.

It's time, instead, to start brushing away the judicial inertia.

Mr. Moss. Thank you very much.

Mr. Eckhardt?

Mr. ECKHARDT. Do you believe that the question of jurisdictional standards under this bill, that is, H.R. 7514, which would be very similar to H.R. 4994, the jurisdictional standards which constitute a showing that catastrophic harm was involved, that is, death or accidental harm resulting from permanent and total disability, or resulting in permanent or partial disability of 70 percent or more or disfigurement, do you think these jurisdictional standards might possibly be determined in pretrial?

Mr. MACKOFF. Yes. I think that the filing of the case in these jurisdictional standards would have to allege a meeting of the threshold requirements.



Now, we have found—and I am sure it has been your experience—that the allegations contained in the lawsuit cannot always be supported by the facts. Where the amount claimed by many of the plaintiffs in our cases, when it comes to trial, the amount which is actually proven is a great deal less. I think that pretrial could establish certain of those requirements.

Mr. ECKHARDT. I understand, of course, written in here gives a certain administrative authority to spell out in more detail precisely what the standards mean. What I am getting at is, if it were possible to determine these matters in pretrial without a jury, and possibly a fact situation calling for some testimony necessary before a master, might you not greatly reduce the load of the courts through this process?

Mr. MACKOFF. Yes, I expect so.

Mr. ECKHARDT. I ask that because I think it is extremely important that we weed out those cases that raise questions of substantial permanent or partial disability.

I am very concerned about the standard now set out. I think 70 percent is too high. I also feel that we don't really get relief under this section, the definition in 14-C, Roman ii, because it is limited to not exceeding 36 months, which is a very short time with respect to disability, and it is \$36,000.

But I am troubled by the testimony of the last witness that if we set up standards which are not almost wholly mechanical, we may run into some of the same or as difficult a problem in determining the jurisdictional question as we would run into in the case itself.

Mr. MACKOFF. Well, part of our problem in the cases being filed in the law jury division of our court has come from the fact that the legislature in their definition of the jurisdiction of magistrates—and we have set up our cases on the basis that the more serious cases are tried by judges and the less serious by magistrates—have prevented the magistrates from hearing many small cases because they put it on the basis of the amount claimed.

There are no definite standards upon which to measure the seriousness of the case, because it is up to the lawyer in good faith to indicate on his ad damnum clause what the amount claimed is, and if he in good faith thinks the case is worth \$100,000, it precludes the magistrates from hearing such matters. So I think there should be definite standards set up in order to indicate what the court's jurisdiction would be.

Mr. ECKHARDT. Now, Mr. Dukakis testified that the kind of case I was describing, that is, the partial-permanent disability case, was a relatively small percentage of the total number of cases, and I think I agree with that.

If it is, and if we may establish some proceeding which is relatively quick and which doesn't occupy the courts and juries over a longer period of time, I would like to see us remove those cases from this coverage by such procedure. But I would be included to remove a greater number of cases in the standards set out here.

Mr. MACKOFF. My position is this: I would like to remove as many cases as is consistent with adequate compensation to the victim.



Mr. ECKHARDT. Well, I guess that is the proper standard. What we are really trying to do, it seems to me, is take all of those cases in which the ultimate recovery can be reasonably positively established and which do not raise the more difficult questions of permanent-partial disability and let them be decided by something closer to a rule of thumb than the present method of decision.

But in doing so, I would not like to infringe on that area of cases in which there may be a very substantial permanent-partial disability.

Mr. MACKOFF. Well, I can only say to you that I am not expert in the matter as to the percentages of disability which should be included in the bill. I support the bill on the basis that a substantial number of cases which are now flooding the courts would be removed from the courts, and I feel the persons who are the victims of accident cases would be adequately compensated.

Now, as to the more serious cases, I certainly leave it to those who are more expert in the questions of compensation to determine.

Mr. ECKHARDT. That is where you draw the line?

Mr. MACKOFF. Exactly.

Mr. ECKHARDT. But what I am asking you is a procedural question, and I think you have probably answered it: That is, whether there might be some means of determining this jurisdictional question, that is, the line drawing question, short of the rather complex and time consuming court and jury process.

Mr. MACKOFF. Yes, as I pointed out before, in answer to your suggestion, I think it is a good one, that preliminarily the question of jurisdiction of the court in the first place would be raised and a hearing held on that, which would not take the time to try the case.

If it doesn't fit that category, it would be removed. If it did, it would go on for trial on the issues.

Mr. ECKHARDT. You don't run in any more difficult standards, really, than you run into on pretrial in determining whether or not the case is properly a class action, as you see it. There you raise—

Mr. MACKOFF. Yes, on the question of class action there are certain requirements that have to be met, and the court explores those requirements before proceeding further.

Mr. ECKHARDT. Surely, and they require certain rather abstract standards which the court must apply which will be governed by the facts of the case, but the court seems to pretty well take care of those types of cases.

Mr. MACKOFF. Yes, but as I indicated before, I would support less abstract standards so the court has a better guideline on which to measure these cases.

Mr. ECKHARDT. I think your point is very well taken.

Thank you, sir.

Mr. MOSS. Mr. Ware?

Mr. WARE. My question has been covered.

Mr. MOSS. Mr. Mackoff, I want to thank you. I believe the statement you have made here is one of considerable value to the committee. We are appreciative of it.

Mr. MACKOFF. Thank you, sir. If you would like to enter into the record the editorial of today's Wall Street Journal, I hand it back to you with your House bill.

Mr. Moss. Is there objection to placing the editorial in the record immediately following the formal statement?

Hearing none, it will be placed, together with the statement, in the record. (See p. 147.)

Mr. MACKOFF. Thank you for inviting me. It was a privilege to be before you. If there is any way I can be of assistance to you, I am sure I will be.

Mr. Moss. Our next witness is Mr. John J. O'Brien, insurance manager at Franklin Mint, Inc., Franklin Center, Pa.

#### STATEMENT OF JOHN J. O'BRIEN, FRANKLIN CENTER, PA.

Mr. O'BRIEN. Honorable Chairman and members of the subcommittee, I am here as a concerned citizen to speak on behalf of the auto liability insurance reform. I am also an extremely nervous citizen.

Mr. Moss. Relax and don't be. There is no reason to be nervous. You might find it easier to read your statement. That sometimes is much easier than attempting to do otherwise.

Mr. WARE. May I assure him, as one of our constituents, you are well protected.

Mr. O'BRIEN. Very good, Mr. Ware.

Mr. Moss. We have a good strong man on our side.

Mr. O'BRIEN. I have approximately 21 years of experience in this field of insurance, 13 of which were spent in insurance company and corporate claims, with heavy emphasis on the investigation and evaluation of truck and automobile liability accidents.

Over the years, I have become totally convinced that our present system of tort liability does not satisfy the principal purpose of liability insurance, which is to see that innocent victims are paid their losses. It is a well-documented fact that the current system work unfairly. It favors the affluent and mitigates against the poor. The individual injured in an auto accident who is living from payday to payday is a soft touch for an experienced adjuster—I know. There is also gross inequity in the amounts paid in the settlement of claims. Additionally, a substantial part of what is paid is lost to attorneys. The small bodily injured claimants are often overpaid, while the seriously injured often collect but a fraction of their losses, after payment of fees to lawyers that average 25 percent of benefits.

We hear more and more complaints about the soaring cost of automobile insurance, as well as the inability to purchase insurance from reputable underwriters. I have had comments made to me in both my present firm and while with my previous employer, concerning my inability to obtain automobile insurance for individuals. "Don't you utilize your influence with your principal underwriter?" Our premiums were a million dollars plus and even with that I couldn't get the insurance company to take the underaged driver or the individual who was canceled, perhaps, for no good reason at all, and most often that was the case.

The backlog of tort cases are insuring that those who have to pursue their claims in court can in some cases wait as long as 5 years for a verdict. If they are unable to work and require income, to whom do they turn? In many cases their personal resources are totally inadequate.

In some cases, they turn to the lawyers, and I don't think that is proper. The lawyer violates his code of ethics, and the client becomes a partner with him in his unethical conduct.

The fault system is obviously failing to meet the needs of motorists, and reform appears to be imminent.

No-fault legislation is pending before Congress at this time. Mr. Moss, I have read your bill with interest. I generally agree with it and think it could be offered to the States as a model uniform bill with some modifications. I favor legislation by the States in this area as opposed to the Federal Government. I do think that the States should, however, have it made very clear to them that short of legislating in favor of uniform, no-fault law, the Federal Government will have to move into this field.

I commented in my written statement regarding my exception to Section 5, page 11, caption "Insurance Requirements." I have reference to the provisions pertaining to trucks having to assume a heavier burden or a larger portion of claims. I know for a fact that those insurance companies specializing in insuring heavy duty trucks will pass this cost onto the trucking companies; the trucking companies will find some means of passing it back to the manufacturers whom they service, and you know who will wind up paying the bill in the end.

The nonmotoring public will be paying for this, as well as the motoring public.

I think that that portion of your bill should be eliminated, and it should be—

Mr. Moss. Mr. O'Brien, in H.R. 7514 that portion has been eliminated.

Mr. O'BRIEN. Wonderful. I have been wasting my breath then.

Mr. Moss. That bill was introduced yesterday and will be available probably tomorrow or the next day.

Mr. O'BRIEN. I have some other thoughts, too. I am strictly against using the medical bill to trigger the tort case, because the medical expense can be readily pushed beyond \$500 the limit used in Massachusetts, or above \$1,000, if you wish. If a man goes to a hospital today and takes a private room, it is not unusual for him to spend \$100 a day for the room. He can spend 3 days in the hospital just being examined, and be justified and entitled to file a tort action if we say that \$500 medical expense is the tort action entree.

I think that perhaps consenting doctors, having examined an individual, could be used as the trigger. There could be a court-appointed panel of physicians and instead of going into pretrial and making the determination there, the plaintiff could submit himself to this panel. If it concurred, fine, he has a tort action.

Short of that, he should be restricted to compensation under the no-fault law.

That is about all I have to say, gentlemen. It was certainly an honor and a privilege to have appeared here, and if it hadn't been for you, Mr. Ware, I would have fallen out of my chair. Thank you.

Mr. Moss. I think it might be informative to the members if you would outline more completely your own background.

Mr. O'BRIEN. Very well. I have approximately 13 years with insurance companies in various claims capacities, starting as a street adjuster and advancing to manager.



I was national director of claim services of Avis Rent-a-Car Systems for 3½ years. So I do have a real feeling for the national picture as respects automobile tort liability.

I spent 5½ years as insurance manager of Mack Trucks, Inc., and, of course, became somewhat involved with the over-the-road trucker at that time.

I think I have seen this situation from both the insurance company and the corporate standpoint, and I have participated in tort liability as an insurance adjustor, supervisor, examiner, and manager.

I have told my employees that a good settlement was not necessarily a fair settlement. If a man made a fair settlement, that was not, in my opinion, a good settlement.

I don't think I speak any differently than the rest of the insurance claims population. That is their job, to conserve as much of the insurance company's assets as possible. In doing so, I think they do a grave injustice in many instances to people who just don't have the wherewithal to hold up.

As I said in my statement, a claims adjustor calling on a man who lives from payday to payday, knows that within a week or 2 weeks his back is going to be up to the wall and a settlement that "albeit not fair but good," will be acceptable to him. These people, as a general rule, will not go to lawyers. They don't have an attorney. They wouldn't know how to approach one. In my opinion, they are the ones who get hurt.

The educated man who knows his rights, who reads, realizes that as soon as he calls on a lawyer, whether the attorney does anything for him or not, the value of his case is going to be increased in reserve by the insurance company.

It is this type of claims practice, before trial, which I think short changes the general public. They would be much better off if they were dealing with their own insurance adjustor from a company to which they were paying premium.

I think they would stand up for their rights much more so than in dealing with a strange individual representing someone whom they consider to be an adversary.

Another factor—I do not believe that with today's driving conditions, with the great number of automobiles, trucks and other vehicles on the highways, with the poor condition of so many of our streets and roads and the vulnerability of the automobile itself, that you can really argue fault or no-fault in the great majority of cases. If you want to punish, I think you should do so through the criminal system and not the tort system.

I suppose as a lawyer by education it could be said that what I am saying is not to the best interests of the legal profession, but I personally believe that those attorneys who are competent may be hurt temporarily, but that they will survive the enactment of this type of legislation. These who are not, will do the legal profession a favor by going elsewhere.

That is all I have to say on that subject.

Mr. MOSS. Mr. Ware?

Mr. WARE. Thank you, Mr. Chairman. I think he has overcome his nervousness.

Mr. MOSS. Mr. Eckhardt.



Mr. ECKHARDT. If this were only a question of fault or no-fault, the problem might be a little different than it is; but it is true, it seems to me, that a no-fault provision also provides a rather stringent restriction of recovery. For instance, in this section 14-C-ii of the bill, the amount of recovery is limited to \$36,000 and to an amount determined on the basis of earning losses over a period of 36 months, unless, of course, the case goes out of the coverage of the bill because of its catastrophic nature.

Now, as an insurance man, I note that there is an exception here and that it talks about permanent disfigurement which is permanent, severe and irreparable. Do you think that would include, say, the loss of a thumb?

Mr. O'BRIEN. I would say so. I would say any dismemberment.

Mr. ECKHARDT. Of course, it says permanent, severe, and I suppose that would be, but, of course, where the line is to be drawn, if you are to say the first phalanx of the forefinger, you have a closer case, but somebody is going to have to determine this issue.

Mr. O'BRIEN. Particularly when you must evaluate what this does to the man's ability to earn a living.

Mr. ECKHARDT. If it were a surgeon, for instance, that lost a portion of his forefinger, this would be quite severe to him, whereas it might not be too serious for a longshoreman. But someone is going to have to determine that.

Mr. O'BRIEN. Once again, as I said earlier, I think this is a matter for the medical profession rather than for the legal profession.

Mr. ECKHARDT. I rather agree with your statement that the amount of cost of medical care may not be as good a measure as the standard used in this bill using disfigurement and the 70-percent disability, because if we use our thumb case again, the medical might not exceed \$500.

Mr. O'BRIEN. That is right.

Mr. ECKHARDT. And yet the loss is terrific, particularly for the surgeon, as I described.

Mr. O'BRIEN. You could lose an eye and have less than \$500 medical expense, or both of them, as far as that goes. So some sort of a court appointed or sanctioned board of physicians, as I see it, would be best able to judge what this man's particular injury or disfigurement has done to his career potential or—not necessarily "career"—but family life. Who knows.

If, in their opinion, there is severity, and what criteria you use I am not prepared to say at this moment, but if they said, yes, this man is hurt and he is irreparably damaged, then this would be his entree into the courtroom. Short of that, who is going to measure the 70 percent?

Mr. ECKHARDT. Certainly, it would have to be some sort of a judicial process although the judicial process might utilize medical experts. I was suggesting possibly pretrial and possibly the use of masters with respect to conducting the factual investigation.

Mr. O'BRIEN. Well, if you made this a condition of getting the pre-trial, I think, that is, being passed on by some sort of a judicially appointed board of physicians, I believe you would be reducing the time spent by the court on tort law and tort cases.

Mr. ECKHARDT. Thank you, sir.

Mr. Moss. On the matter of determining the disability, again I would call attention to the fact that there is one Federal agency which for many, many years, has had a very sophisticated system of rating. That is the Veterans' Administration. I think the rating system has been challenged on many occasions. It has withstood many tests, and it is available to any Federal agency, such as the Department of Transportation. It is used now across the Nation in millions of cases involving ex-servicemen.

Mr. WARE. May I interrupt a moment?

Mr. Moss. Certainly.

Mr. WARE. I don't know whether Mr. O'Brien is familiar with the VA and the standards.

Mr. O'BRIEN. Yes, I am. I have appeared before it for evaluation of disability. I would say that I would rather appear before the VA than I would the administrators of social security to qualify for total disability.

Mr. Moss. I think you are right, and I think it reflects the much more broad experience.

Mr. O'BRIEN. I would find nothing wrong with utilizing the same criteria as the VA in determining disability.

Mr. Moss. What, I wonder, constitutes disability for social security?

Mr. O'BRIEN. I have yet to find out.

Mr. Moss. There is no doubt under the VA, because of the standard applied.

Mr. O'BRIEN. Once again it is utilizing a consensus of a group of physicians in evaluating disability. There they have no ax to grind, which is not always the case with physicians in private practice.

Mr. Moss. Well, I want to express the appreciation of the committee to you for your appearance here. We have been very pleased that you have come.

Mr. O'BRIEN. It has been my honor.

Mr. Moss. I hope now you feel more relaxed.

Mr. O'BRIEN. Thank you, I do.

Mr. Moss. With that the committee will stand in adjournment until tomorrow morning at 10 o'clock.

(Whereupon, at 11:55 a.m. the hearing adjourned, to reconvene at 10 a.m., Thursday, April 22, 1971.)



# NO-FAULT MOTOR VEHICLE INSURANCE

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THURSDAY, APRIL 22, 1971

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

We have been waiting for Governor Sargent of Massachusetts. He has obviously been delayed, and I would, therefore, ask Dr. Bernard E. Finneson to testify at this time.

## STATEMENT OF DR. BERNARD E. FINNESON, RIDLEY PARK, PA.

DR. FINNESON. Mr. Chairman and members of the committee, thank you very much for allowing me to speak to this issue as a physician. I am an active practitioner in the field of neurosurgery and have been for the past 20 years.

I think all doctors consider it a self-evident truth that patients who suffer from medical-legal injuries have symptoms that are markedly prolonged compared to the same injuries that occur when secondary gain is not a factor. For example, if an individual suffers a fall in his own bathtub and strikes his head, he may develop a headache and he will take something like aspirin or some mild analgesic, and this will subside in a day or two. The same impact or the same force of injury that will occur with a vehicular accident can ordinarily be expected to take months and sometimes years before improving. In many cases the time that goes by with the symptoms unimproved are extremely difficult to explain.

As a consulting physician, I see many patients every week who fall within this category. These individuals are usually involved in a vehicular accident where the extent of the trauma is minimal. However minimal the trauma, the symptoms persist and remain unabated. X-rays and many other studies are done, and these are normal, and because of the persistence of headaches or other aches and pains, consultation with one or many specialists is often requested. Almost invariably these patients with prolonged symptoms are involved in lengthy, long-drawn-out medical-legal dealings. In most cases, they have consulted with attorneys who have advised them to defer settlement of their medical claim since "you never know how long it will take to get well."



If minor trauma can so easily produce such prolonged symptoms from vehicular accidents, one might expect to see at least the same number of such symptoms produced by trauma at home. We have all heard how "most accidents occur in the home." In carrying out many of the household tasks involving gardening, cleaning rain spouts, doing minor repairs around the home, a whole series of mishaps must occur. However, these individuals are rarely referred to me. Where do they go? To which neurosurgeon are these home injury cases sent? The answer, of course is that they are not sent anywhere, since, with few exceptions, they are nonexistent. Very few home injuries involving negligible trauma result in prolonged symptoms.

Now, what is there about insurance cases that creates such long-standing symptoms? Years ago, most doctors thought that almost all of these people were fakes or malingerers. In other words, they were consciously claiming symptoms that they knew they did not have for the pure and simple desire of achieving financial reward. Although some of them undoubtedly are fakes or, to use the medical term, malingerers, a large percentage of them are not. When detectives or other observers have surreptitiously observed many of these patients, they would limp about or behave in a sick fashion even though they did not know that they were being observed.

It is possible that our present insurance system can actually prolong symptoms? We believe that this is actually the case. We feel that the conditioning or circumstances surrounding the management of these patients in many cases actually makes them sick and prolongs their actual symptoms. Let me give a simple example of how so-called conditioning, which is what psychologists mean by the surrounding circumstances, can modify pain. All of us have sent children to bed a bit earlier than they might want to go or sent them upstairs to do their homework, and if, while going up toward this unappreciated task, a child slips and bumps his knee on the steps, the parent is apt to hear howls of anguish.

Take the same youngster by the hand to see a football game or baseball game, and as he is climbing up the steps of a stadium he accidentally bumps his knee, that same injury delivered with identical force will probably cause very little pain or in some cases may even go unnoticed. The parent may ask, after sitting in the stadium seat, "How did you hurt your knee?" and the child will truly not recall having done so.

This type of situation is seen so often by parents as they raise their children that the example I gave will raise no eyebrows. However, if we reflect upon it, what we are seeing is an example of conditioning or a change in the surrounding environment producing a difference in symptoms when the injuries are identical.

Now, this example that I have given is rather simplistic and the conditioning and stimuli of an insurance case may be much more complex, and I recognize this, but some of the same conditioning mechanisms are in operation here also. For example, one must realize that oftentimes the doctor who is treating his patient and wants the symptoms to subside as quickly as possible is working counter to the desires of the attorney whose job it is to secure for his client the largest possible settlement.

In attempting to do the best job for his client, the lawyer will want to assure himself that he is not settling the case too early. He will often request additional X-rays and additional tests to assure that nothing has been missed. He may feel that it is his job to ask the patient, "Are you sure that you still don't have symptoms?" or in many cases, being knowledgeable about certain injuries, may even ask leading questions. In many cases management of this sort can only tend to prolong symptoms.

It is not unusual for me to see children who have been involved in a vehicular accident and are subjected to constant and repeated questions regarding their symptoms. Such questions may have implanted in their minds morbid preoccupations that lead to prolongation of symptoms.

What effect does such prolongation of symptoms have in the lives of patients? It, of course, interferes with their activities of daily living and, in many cases, prevents them from resuming their work. Because of their persisting symptoms they will visit not only their own physician but are sent to a variety of specialists in the hopes of deriving the answer. On the basis of the longstanding nature of symptoms, it is quite common to see a host of tests and studies being carried out which would ordinarily not be necessary. Some of these tests involve some hazards, and many of them are, at best, uncomfortable. In some occasional cases, on the basis of prolongation of symptoms, unnecessary treatment is carried on.

If the facts as I have presented them seem exaggerated or blown out of proportion, let me hasten to indicate that, if anything, my thoughts are conservative. Aside from whatever legal or financial benefits may occur with the system of no-fault insurance, I feel certain that it will result in a more speedy recovery overall for many patients.

Mr. Moss. Thank you, Doctor. In other words, you would say that no-fault would mean a healthier America?

Dr. FINNESON. I think so, yes.

Mr. Moss. I think the statement is one which will be extremely valuable to the committee and its members.

Mr. Broyhill?

Mr. BROYHILL. I appreciate the Doctor coming. It is a very thought-provoking statement, and it gives us much to think about as we consider this legislation.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. Doctor, I have certainly no doubt that your observations have much truth in them. As a matter of fact, I remember one time being in the office with an associate of mine who was settling a case with a claimant. He seemed to me to walk out in a more spritely fashion after the settlement than when he came in.

I asked my partner, "What did you tell him, 'Take up thy check and walk?'"

I don't think that there is any question that there is, as you say, a psychological effect which is not necessarily connected with the intentional malingering; but what I would like to ask is: How does this bill avoid that?

You understand, of course, that the question of degree of injury is not settled in this case under this bill; only the question of fault.

Dr. FINNESON. That is correct.

Mr. ECKHARDT. Now, let me give you a practical example of how it might work. Someone comes into my office who says he has been injured in an automobile accident, maybe a whiplash or maybe some injury to his back, and it is very difficult to determine whether it exists or not by objective tests. You recognize that, of course.

Dr. FINNESON. In many cases, yes.

Mr. ECKHARDT. So, looking at him entirely objectively, one would think his injury probably doesn't exceed 50 percent permanent partial, but after all, if that is the case, and if he is going to be permanently partially disabled for life, 36 months or \$36,000 is a rather small recovery.

So, as a lawyer attempting to get him proper recovery, I have him examined, and I am concerned about establishing that this is a catastrophic injury. In order to do so, I have to get testimony to the extent that it is 70 percent, and after all, this is a question of judgment. I am not acting unethically by making that contention in court because it is a question of judgment, a question of differences and medical opinions.

So I have him examined just like I would have a person examined today without no-fault insurance. I file his case in State court contending that the Federal no-fault insurance doesn't apply because it is a catastrophic injury. I have almost got to do that under this bill if he really does have permanent-partial disability in the range of, say, 10 percent to 70 percent or over, because there is no way I can really recover adequately for him under the bill.

Now, don't we run into exactly the same psychological hazards in such a case as we do under present law?

Dr. FINNESON. Well, first of all, there are, as you say, many areas that may be potentially falling between the chairs. Of course, any bill can be written any way that you want. But, basically, one of the things that are changed in this bill is that pain and suffering is treated a bit differently than pain and suffering is treated in our present insurance system.

Mr. ECKHARDT. Well, is it in there at all? Is it covered at all in the Federal legislation, assuming that the case falls within the no-fault categories and not the catastrophic category?

Dr. FINNESON. Pain and suffering is a very difficult thing to measure. When one person says they have pain, another person hears an entirely different thing, because pain means so many different things to different people.

I have a pain threshold laboratory in my office. But despite attempting to measure this particular sensation, it is so subjective that it is probably best to stick to objective findings.

In other words, if a patient complains of certain symptoms that are recognizable or fall within a recognizable clinical entity and we see changes on the X-rays, or because of these changes the patient is disabled and must be out of work, this should be recompensed.

But in the case of an individual who may complain of certain vague symptoms which cannot be documented on the basis of objective testing, it is our contention that this type of symptom does fall within the realm of conditioning or the situational environment changes.

Mr. ECKHARDT. Well, let us get down to the bill itself. Under 14 on page 4, you have got, of course, (a) medical expenses; (b) you have



got expenses necessary for occupational therapy and rehabilitation; (c) you have got loss of earnings for a period not to exceed 36 months or \$36,000, and (d) you have got appropriate and reasonable expenses necessarily incurred as a result of the injuries.

For instance, perhaps a person might have to be given a special type of bed to sleep in for a period of time or conditions might change in the household that cause extra costs, but other than that there are no categories available here.

So the bill simply writes out pain and suffering, doesn't it?

Dr. FINNESON. It simply writes out pain and suffering.

Mr. ECKHARDT. Now, this may be good.

Dr. FINNESON. I think it is good.

Mr. ECKHARDT. But, of course, it doesn't write out the contention that the injury is catastrophic and, of course, if it is determined that it is catastrophic, as I understand the bill, this lifts the case out of the bill and into the ordinary tort category.

Now, I may be wrong about this. I think pain and suffering is unavailable if the injury is catastrophic.

Dr. FINNESON. I think any catastrophic injury should be so treated, because this is a special situation.

What I am talking about is the patient who may be bumped by another car, and as a result of this relatively minor trauma, may develop a stiff neck and X-rays are taken and motion studies are done on X-ray and a variety of physicians examine this patient and that stiff neck never gets better.

That is the patient that I don't think should be recompensed as far as their pain and suffering is concerned, but anyone who suffers an injury where there is catastrophic damage certainly should be managed as a special case and should have all of the benefits that the best attorneys are able to accrue for them.

Mr. ECKHARDT. Well, let us suppose this man who is in an accident does get this stiff neck. Of course, the first thing he thinks about is that I had better not settle this case because of the damages of the automobile and, besides that, maybe I can't get it and maybe I don't have insurance on a 5-year-old car. I know the other party is insured and I want to collect at least my \$250 damages on my car.

So he tries to get a settlement privately. He gets nowhere with the other insurance company and they say, "You are contributorily negligent," and there is an argument to that effect. So he goes to a lawyer and the lawyer says, "How much were your damages?" He says: "\$250." And the lawyer says: "Didn't it hurt you a little bit? Didn't you receive any kind of injury?" The man says "I have a stiff neck." Then the lawyer says "Well, you may have a disability that will really put you out."

Now, it is possible to contend that a back or neck injury constitutes 70-percent disability and, of course, that is at least arguable for the purpose of settlement.

Dr. FINNESON. Yes.

Mr. ECKHARDT. So you create these same psychological hazards for this man under this bill as you have now, don't you? The question is not now whether he will recover under the no-fault claim, but the question is whether he falls inside or outside the no-fault statute.



Dr. FINNESON. I think it would probably be much more difficult to claim a catastrophic injury with regard to inability to function and maintain a livelihood, and so forth, when you take away the pain and suffering.

Mr. ECKHARDT. Now, let me ask you this question as a doctor: Suppose a person has been injured to the extent of a 50-percent permanent-partial injury and you really believe this to be true as an examining physician, under such circumstances, do you think it is just to limit his claim to loss of wages for a period of 36 months and \$36,000?

His injury will cost him, perhaps, 50 percent of his earning power for the rest of his life.

Dr. FINNESON. What type of injury are you speaking of?

Mr. ECKHARDT. Well, let us assume, for instance, that he has some type of back injury that prevents him from doing the kind of work he has done previously. Say he has been a cable splicer for a telephone company and he can't climb poles any more and can't engage in any kind of physical effort that he has done before and this is going to continue with him for the rest of his life.

It seems to me as though it is a pretty strict limitation to say that in such a circumstance, because it happened to be an accident related to an automobile collision rather than the fall from a telephone pole that he is to be limited to a total of \$36,000 or 36 months of disability.

Dr. FINNESON. As you present the case, that would seem to be correct. However, as a doctor, I must say that any injury that is severe enough to cause a man to be that incapacitated, taking away the psychology, the conditioning, the environmental aspects of it, would be rather unusual.

With most individuals, the same back injury that may occur to a man who is self-employed is much less a decompensating injury than a similar injury that has occurred where an individual is injured on the job. A whole host of circumstances set in.

If you bend down and do a little gardening and pull up some rocks and hurt your back, you may have to take it easy for a few days; but if a man injures himself at work, a whole group of circumstances occur with relation to this injury that have nothing to do with the injury.

He says:

I have worked for that company for 20 years, and I have done overtime, and I hate my foreman, and this guy is picking on me.

All of this may be true, and this is not a medical thing. Yet, it relates to the disability and prolongation.

The same thing can occur with an automobile accident. All of a sudden, as a result of the fact that maybe his car wasn't perfectly repaired, or couldn't be perfectly repaired, you have a man who not only has symptoms but he is sick, and this system is making him sick.

Mr. ECKHARDT. But you are not insisting that all injuries to the back that are incapacitating are due to the possibility of recovery in a lawsuit, are you?

Dr. FINNESON. Absolutely not. No, I don't mean to imply that.

Mr. ECKHARDT. And this is a psychological effect?

Dr. FINNESON. But I want to say that there is such a strong psychological interrelationship in many of these cases that we must open our eyes to it and consider it when we consider any legislation involving this type of problem.

Mr. ECKHARDT. Doctor, I think you are absolutely right about that, but I suppose the question of providing any kind of legal opportunity to persons who are injured is going to create, at least to a certain extent, the problem you are describing. I don't see how we can avoid it under this legislation or any other legislation.

Dr. FINNISON. I agree that anything man-made must be less than perfect and, yet, we have to try.

Mr. ECKHARDT. It is particularly true with legislation.

Thank you.

Mr. MOSS. Mr. Ware?

Mr. WARE. No questions.

Mr. MOSS. Doctor, I want to express my appreciation, and I think I speak the consensus of the committee, for your appearing here today.

Dr. FINNISON. Thank you for the opportunity.

Mr. MOSS. Our next witness will be Mr. William R. Hutton, executive director of the National Council of Senior Citizens.

#### STATEMENTS OF WILLIAM R. HUTTON, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF SENIOR CITIZENS, AND RUDOLPH DANSTEDT, ASSISTANT TO THE PRESIDENT

Mr. HUTTON. Thank you, Mr. Chairman, I brought along with me the assistant to the president of the national council, Mr. Rudolph Danstedt, because he has a personal history which involves this kind of legislation, and I would like you to hear it first-hand.

I am grateful, Mr. Chairman and gentlemen of the committee, to represent the 3 million member National Council of Senior Citizens at this hearing in order to support this urgently needed national auto insurance reform legislation and to endorse H.R. 7514.

We believe that U.S. motorists, especially older motorists, would benefit greatly from a Federal guarantee of their right to buy auto insurance, as section 5(e) of H.R. 7514 provides, as well as a simplified procedure for collecting auto insurance personal injury claims.

On behalf of the national council membership, I want to thank Congressman John Moss for sponsoring H.R. 7514 in the House, and Senators Philip Hart and Warren Magnuson for sponsoring auto insurance reform legislation in the Senate.

I wish to say the National Council of Senior Citizens is flooded with letters from older people across the country on this kind of legislation. I want to quote from a few of them.

For example, an elderly couple moved from Port Jefferson, N.Y., to Fort Lauderdale, Fla. The wife recently wrote the national council:

My husband is 67 and I am 59. We do not want to experience cancellation of our auto policy. What can we do?

Unfortunately, under existing law, there is no assurance their auto policy will not be arbitrarily canceled on account of their age. A 1968 survey by the University of Denver Law School found that 31 percent of insurance companies refuse to write auto insurance for those age 65 or over regardless of the applicants' driving records. Other companies cancel policies not for logical reasons but "primarily on hunches rooted in prejudiced attitudes toward age," as Senator Harrison A. Williams, Jr., Democrat from New Jersey, has pointed out in a public statement.

A member recently wrote the National Council from Albuquerque, N. Mex.:

I am in a fix. The State of New Mexico would not give the company that insures my car a rate increase so the company simply quit doing further business in New Mexico. I am 72. How am I going to get my car insurance renewed?

The Albuquerque letterwriter has a perplexing problem. We could give him no reassurance.

A St. Paul, Minn., woman writes that when she became age 65, her insurance company canceled an insurance policy on her car. "I located a high-risk insurance company willing to renew my insurance but they ask such a big premium, I have decided to sell my car," she stated.

A 67-year-old woman, who lives on a farm and works as a librarian in northern Indiana wrote:

I just received notice of cancellation of my car insurance policy. I have driven for 50 years and have never been recipient of reimbursement for a car mishap because I have never had occasion to make a car insurance claim. As a safe driver, where can I go to renew my car insurance?

In the absence of any legal requirement for a private insurance firm to sell this woman a car insurance policy, what can the National Council of Senior Citizens tell her?

A teacher writes from central Georgia:

I recently retired at age 66 after spending many years in a kindergarten classroom in New Jersey. Since returning to my home in Georgia, my car insurance rate was doubled overnight. I simply cannot afford such an increase on my small income.

This woman is a victim of economic injustice growing out of the pervasive prejudice against the elderly.

These letters are representative of the daily flow of mail to the national council from men and women with car insurance problems.

Today the private insurance industry is provided a readymade market because of State compulsory insurance and financial responsibility laws. The recommendation of the Department of Transportation for compulsory no-fault car insurance, and proposed under H.R. 7514, would continue to provide insurance companies with a guaranteed market as to the no-fault coverages. But only H.R. 7514 and H.R. 4994 in the House and the Hart-Magnuson bill in the Senate recognize that insurance companies must be required to serve adequately the motoring public.

Among drivers arbitrarily branded substandard insurance risks are many age 65 or over, as letters to the National Council attest.

The Department of Transportation studies, and hearings held by the Senate Antitrust and Monopoly Subcommittee, have documented fully the unfair and unreasonable way in which some car insurance firms discriminate against applicants for car insurance, particularly our senior citizens.

The record shows also that some car insurance policies have been canceled, and car insurance applications have been declined, because the policyholder or applicant live in "substandard environment areas" where, sad to say, many of our senior citizens are forced to live.

Underwriting competition for the best drivers—those between the ages of 30 and 60 who live in the suburbs and who drive comparatively little—has resulted in a fragmentation of the market that is destroying the basic insurance concept of spreading risk among large num-



bers of people. This has been well documented in the Department of Transportation study entitled, "Insurance Accessibility for the Hard-to-Place Driver," issued in May 1970. We would like to call the subcommittee's attention to pages 1 through 3 of that study. The National Council of Senior Citizens hopes that section 5(e), in conjunction with section 6 of H.R. 7514, may help solve this critical social problem.

The auto reparations system has been the subject of extensive investigation and study over the years. The Department of Transportation's 2-year inquiry has revealed clearly the incredible administrative and social cost of fixing blame as a basis for determining insurance payments.

The DOT study indicates that, and I quote, "Total attorney fees probably exceeded \$1 billion in 1968," and court costs and litigation expenses exceeded \$110 million that year. Why is it necessary to have such an expensive system to deliver needed compensation to accident victims and their dependents? It isn't. H.R. 7514 would correct the situation.

A study by the Federal Judicial Center indicates lawsuits involving car accidents take up 11.4 percent of the judges' time in Federal courts, and 17 percent of the judges' time in State courts. What a waste of judicial talent.

A Senate study shows that only 42 cents of every auto bodily injury insurance premium dollar gets into the hands of claimants. Of the remaining 58 cents, a total of 40 cents is retained for company and selling expenses and for investigation of claims, 16 cents goes to claimants' lawyers, and 2 cents for court costs and other litigation expenses. We deal a lot with the social security system, and we want to make a comparison. Net administrative expense of only 3½ cents was needed to deliver each dollar of disability income benefits from the disability insurance trust fund under the Federal Social Security Act during fiscal year 1969-70. A very small administrative cost, indeed, for operating a huge social disability insurance system. Why can't there be a similarly low administrative cost using a no-fault auto accident disability-income compensation system?

In the interest of motorists young and old, why can't we have this type of social insurance for all motorists? In fact, reform along this line is already underway in Puerto Rico where a government plan insures every car accident victim for a full medical expenses and a modest amount of wages while disabled. We urge you to consider this for all our citizens. Such a system would bring justice and fairness to millions of Americans.

The Department of Transportation study of car insurance shows that people who incur less than \$500 of injury loss, collect an average of four times their out-of-pocket losses, but those who suffer \$10,000 to \$25,000 of injury loss collect an average of half their losses, and people who incur more than \$25,000 of injury loss collect on average only 15 percent of their loss. In other words, people who really suffer collect nothing for their pain and suffering—they don't even recover their out-of-pocket losses.

As the representative of 3 million older Americans, I submit that the time has come to make the auto accident compensation system do the job it should be doing—compensating all accident victims fairly, efficiently, and humanely.



The National Council of Senior Citizens is 100 percent behind H.R. 7514, calling for national no-fault car insurance, and H.R. 4999, to compel car manufacturers to build cars that are safer and more sturdy than those now coming off the assembly lines.

Mr. Chairman and members, we want this legislation and we want it now. It would bring down the cost of car insurance policies and this would be a great boon to our present 8 million elderly motorists.

The National Council of Senior Citizens believes that House Congressional Resolution 241 is meaningless because it would do absolutely nothing to bring about effective change now, and when I say, "now," I mean within the immediate future.

Our members insist that a system of no-fault insurance payments is inevitable, and the sooner it comes the better off the American motoring public will be.

I see, incidentally, there was a report in the New York Times today which indicates that the Gallup poll shows 4 to 1 of the American public are in favor of the no-fault insurance.

Mr. Moss. It might be appropriate at this time to include the results of that poll from the New York Times issue today.

Is there objection?

It will be included at this point in the record.

(The article referred to follows:)

[From New York Times, Apr. 22, 1971]

#### POLL FINDS NO-FAULT INSURANCE BACKED WHEN IT IS UNDERSTOOD

Washington, April 21—The Gallup Poll reported today that "most Americans who presently understand" the no-fault automobile insurance concept are in favor of it.

However, a national survey April 3 and 4 showed that only 42 per cent of those interviewed had heard or read about such insurance and only "about half this number" could give a correct description of its main features, according to Dr. George Gallup's American Institute of Public Opinion.

Among the "relatively small group" of persons able to give correct descriptions, opinion was 4 to 1 on the favorable side, the institute reported. It said the knowledgeable group represented about one-fifth of the country's adult population.

Under the no-fault concept, insurance claims would be paid without regard to which driver caused the accident. Medical costs, lost wages and other tangible losses of the policy holder would be covered by his own insurance company rather than by the liability insurance of the driver at fault.

A House Commerce subcommittee opened hearings yesterday on bills to mandate a national system of compulsory no-fault automobile insurance.

The Nixon Administration favors the no-fault principle but wants the states rather than Congress to enact the necessary legislation.

Massachusetts now has the only no-fault law. It has been in effect since Jan. 1 and provides coverage for bodily injury up to \$2,000 while retaining the liability concept for higher losses. No-fault bills are pending in 27 state legislatures.

Results of the Gallup Poll, based on interviews with 1,519 adults question on no-fault insurance, were:

|                               | Percent |
|-------------------------------|---------|
| Approve -----                 | 15      |
| Disapprove -----              | 4       |
| Uninformed or undecided ----- | 81      |
| Total -----                   | 100     |

Mr. HURTON. As a founding member and affiliate of Consumer Federation of America, our organization, the National Council of Senior Citizens, joins with CFA, the Nation's largest consumer organization

which speaks for 30 million Americans, and Consumers Union, publisher of the widely read Consumer Reports magazine, in urging Federal legislation incorporating these major auto insurance reforms:

#### MEDICAL CARE

All people injured in car accidents should receive the expenses of complete medical care, including rehabilitation—regardless of who caused the accident.

#### WAGE REPLACEMENT

The equivalent of their take-home pay up to maximum amount necessary for a decent standard of living would be provided to all disabled victims who cannot work, or their earning capacity if they are students or temporarily unemployed.

#### PERIODIC PAYMENT

Monthly, instead of lump-sum payments to meet expenses and wage loss would be provided all victims.

#### OTHER INSURANCE

Auto insurance benefits should not overlap medical or hospital policies or national health insurance now being considered by Congress of other similar payments.

#### CANCELLATION

Policies must be noncancellable, guaranteed renewable, and available to all licensed drivers. H.R. 7514 provides all of this.

Reforms proposed by Consumer Federal and Consumers Union would, by eliminating much of the present cost of investigation and legal expenses involving car insurance claims, make possible a reduction in car insurance premiums.

This would be beneficial to elderly motorists since the elderly must live on fixed incomes that allow no leeway for the soaring cost of car insurance.

In addition, these proposals would guarantee each able-bodied motorist a reasonable minimum of car accident protection.

Finally, the Federal Government would, under this bill, resume its rightful responsibility over the auto accident compensation system.

As I said at the outset, I brought Rudolph Danstedt, assistant to the president of the national council, and who has worked in this city for a number of years to give his own personal and recent experience, because I think the committee should hear it.

If I may.

Mr. Moss. Indeed.

#### STATEMENT OF RUDOLPH DANSTEDT

Mr. DANSTEDT. Mr. Chairman and members of the committee, I think there is an illustration of a cancellation of an insurance policy on account of age where the premium went from \$189 to \$489, and this happened to me back in 1970.

Mrs. Danstedt and I are both medicare card carriers, and we have been driving cars for 45 years. We have had no traffic violations, but just parking tickets and the rest, and we have never been arrested for speeding, or anything of that sort.

We have probably had, over that driving period of time, maybe four or five car accidents. I think I estimate I paid out something like \$7,000 or \$8,000 in premiums over this period of time, and, at most, this may have cost the insurance company about \$2,000.

We never had any accident where anybody was hurt. There was damage to the car and things like this.

Out of these five or six incidents, I don't think two or three of them we could carry any responsibility for at all.

Anyhow, along about February of last year my daughter, who has four small children and lives in Columbia, came to visit us on a Saturday. She had a Volkswagen. There was a big snowstorm that came along, and she said, "Can we stay overnight?" So we had the house full with four kids.

The following morning she wanted to go to church, and I couldn't see her driving the Volkswagen of hers with the two older children onto the snowy pavement, so I said she could borrow our Pontiac.

She is a good driver, and she went on one of the side roads in Howard County to go to church, skidded and hit a telephone pole. The kinds bounced around in the back seat, as kids will do, and she bumped her nose on the steering wheel and damaged her nose badly and smashed the car up completely.

The car was a total loss, about \$800. It was a 1965 Pontiac, or something like that, and she had something like \$300 or \$400 worth of medical bills, which the insurance company paid without any argument at all.

About a month later we got a letter from the insurance company which said you and your wife must take a health examination. I began wondering what this meant. We have never had any trouble during this period of time in getting insurance at the regular going rates.

Fortunately, both of us were tied in with Dr. Phelps, who is the head of the Department of Medicine at Georgetown University Hospital. We subsequently had health evaluations and so I passed their forms on to Dr. Phelps. He sent them back to me and my wife, who has a slight hearing loss. Otherwise, she is in good shape.

I was very amused at what he wrote about me. He said, "Healthy, white, 66 years old, may be slightly obese."

These were good positive health records on both of us.

Then our insurance expired, I think, about the middle of July 1970, and bang it comes through—a new premium totaling \$489. Previously, we had paid \$190.

I was fit to be tied. I really hit the ceiling on that one, when you come right down to it.

Now, I could see their maybe using this accident in which my daughter had when driving the car. I hadn't been involved in it and my wife hadn't been involved in it, but then they made us take this health examination, and positive health examinations came through on both of us but the rate went up that high.

I wrote the insurance company and asked them what it was about, and they gave me a doubletalk answer, the essence of which was that it was our age and we were over 65 years of age.



So I sent off a couple of sharp notes to both Senator Magnuson and Senator Hart about this situation. I felt this was a very clear case of discrimination because of age. If they found that my eyesight was poor, or that I had some handicap of some sort, I could understand that, but we are here and I think we are still now in good physical condition.

I have run across another incident since then where there was flagrant evidence of cutting you off at 65.

They use any excuse to put you into the high-risk rate, which is what happened to us.

I think this no-fault insurance may not quite hit this problem entirely, but I think it will compel insurance companies to provide us older people with insurance and maybe at competitive rates.

Mr. HUTTON. That is our story, Mr. Chairman and gentlemen. We will be happy to answer any questions.

Mr. Moss. I think the story was very eloquently stated.

Mr. Broyhill?

Mr. BROYHILL. I have no questions.

Mr. Moss. Mr. Eckhardt?

Mr. ECKHARDT. I am very interested in the recital of this case and also in the testimony here. Certainly, the figures that you give on page 4 of your statement certainly eloquently indicate the need for some change.

Mr. Hutton, I notice here it says that 42 cents of every auto bodily injury insurance premium dollar gets into the hands of claimants, and of the remaining 58 cents, a total of 40 cents is retained for company and selling expenses and for investigation of claims and 16 cents goes to claimants' lawyers and 2 cents goes for court costs.

This pretty well jibes with the material as to motor vehicle crash losses and their compensation in the United States in the study by the Department of Transportation in quoting Robert Keeton's findings.

Of course, you would expect some little differences because the standards used may have been slightly different, but it is very close to the same and breaks it down in a little different way.

The report says:

One analysis addressing the cost efficiency of the automobile accident liability insurance system from the consumer's perspective has indicated 44 cents out of every premium dollar collected is used to compensate accident victims for their losses. Of this amount, 8 cents is duplicative of payments from other sources and 21½ cents is used to pay for general damages.

Now, that is on page 51 of the report. Continuing on page 52:

Pain and suffering are intangible losses, leaving 14½ cents to compensate for otherwise uncompensated economic losses. This analysis indicates further that the remaining 46 cents is needed to operate the auto liability insurance system. General overhead, including acquisition expenses, taxes and profits requires 33 cents from every premium dollar. Claims administration costs, including salaries and fees for claims investigators, defense attorneys and plaintiffs' attorneys, consume the remaining 23 cents.

So this certainly does eloquently support your contention.

I am wondering, and, of course, I assume those figures include figures for liability insurance which would include both personal injury and property damages.

Mr. HUTTON. I would assume so, sir.



Mr. ECKHARDT. I think that is correct, and it does not include collision insurance, for example, which would be another measure for additional property damage. But do you see any reason why property damages should not be included in the no-fault provisions?

For instance, in the example given here, I imagine that the cost of medical attention to your daughter's nose was probably not greater than the cost of the repair to the automobile.

Mr. DANSTEDT. A good deal less. About half.

Mr. ECKHARDT. I think we may say that the ordinary collision is one in which injury to property is greater than bodily injury, though, of course, there are the extreme cases.

The statistics seem to show that about the same amount of money is paid out for property loss as for personal injury. Of course, that means that since the personal injury cases tend to be the big ones, most of the cases that you would be talking about for elderly citizens would tend to be property loss only, with slight personal injury.

Would you not feel that this is also a problem that should be addressed in a bill?

Mr. HUTTON. Well, sir, yes. Many of our older people are really careful drivers and, frankly, I don't think you will find that older people deserve the reputation of poor drivers which insurance companies are implying. Some studies have been made. I know that Judge Finesilver in Denver some years ago did a study in which they showed that in fact older people were erroneously weighted by the insurance companies as being a bad car risk.

In fact, they are rather cautious drivers. Of course, conversely, it has been said that they cause some accidents because they drive so slowly sometimes.

Mr. ECKHARDT. Does that really have anything to do with it?

Mr. HUTTON. I think it refers to the question of serious property damage. They don't often completely wreck their cars.

Mr. ECKHARDT. There is another problem with older people and that is that older people tend to drive older cars, both because of their economic position and perhaps because, to some extent, they have become attached to a particular piece of property and don't get rid of it.

Now, if you have an old car, it hardly pays you to insure it. You will buy your liability insurance because the law requires it in most States, but to pay the premiums on insurance on a car, say, 6 or 7 years old is hardly worth it.

Mr. HUTTON. But most of them do.

Mr. ECKHARDT. So your problem is that if you have an accident you have to try to recover from someone who was at fault.

I have found it next to impossible to collect from the other party in cases of this sort, because there are so many possibilities of, for instance, contributory negligence and just the difficulty of ultimately completing your claim. An old person is also at the disadvantage of having to fill out a lot of forms, and unless you get a lawyer for a claim that might not be over a couple of hundred dollars, you simply have to forget it. It would seem to me in this area you would be particularly interested from the standpoint of old people—

Mr. DANSTEDT. I don't know how this ties in, and I don't know if it would prove anything, but at least my quick observation is that a

lot of older people, including myself and a lot of the older associates, do carry deductibles. They are very important. Some of my acquaintances carry zero deductibles when you come right down to it. They want even a scratch on their car taken care of. They are that cautious and careful about it.

I think there is that tendency, you see. If the overall cost of insurance is not pushed up to the kind of limits I was talking about, most of us can afford to carry some deductible on it, too, and we tend to do it.

Mr. ECKHARDT. As a matter of fact, that is what I am suggesting: that is, if insurance costs were reduced and you could simply recover from your own insurance company on a no-fault basis, it would seem to be it would be quite valuable to have this related to property damage as well as personal injury.

Mr. HUTTON. As far as older people are concerned, obviously it goes without saying that they don't have the money, and if they could be protected for property, too, they would like it.

We have not really done a survey on the property end of it as we have tried to do in terms of bodily injury.

We have a meeting of our executive board with 50 members coming up next week in which we will again go into the situation. I would like to raise that with them and get some reaction from the clubs across the country.

Mr. ECKHARDT (presiding). I think it must be valuable.

Mr. Ware?

Mr. WARE. I realize this is not your field, but possibly you or some of the committee know offhand. Are all of the 50 States requiring physical exams in the Nation at any age level?

Mr. HUTTON. I don't know of any that is doing that. I have had no word of any State that will not give insurance without a physical examination to people applying over the age of 65.

Mr. WARE. My question was not insurance. It applied to a license to drive.

Mr. DANSTEDT. I think we would object to it. If there are any physical examinations for driving, let everybody be in the same boat. Why pick on the person because he is 65 years of age?

Mr. BROYHILL. Most States require an eye examination.

Mr. DANSTEDT. Yes.

Mr. ECKHARDT. Mr. McCollister?

Mr. MCCOLLISTER. I found the testimony very interesting, and I appreciate it very much.

Mr. ECKHARDT. Thank you for your testimony, Mr. Hutton.

We next have Senator Newton I. Steers, Jr., who does not have a prepared statement.

If there is no objection, we will permit him to testify at this point.

#### STATEMENT OF HON. NEWTON I. STEERS, JR., A STATE SENATOR FROM THE STATE OF MARYLAND

Senator STEERS. I have a couple of very brief comments to make. I think that the sole reason I am really here is because I was the Insurance Commissioner of Maryland for 3 years, and I have no tremendous or earth shaking profundities on the general subject of no-fault: but I did ponder it for those 3 years, and I did have an op-

portunity to become aware of the state of the automobile insurance industry.

I would have to say, first of all, that it is in pretty bad shape. I think there are those in Maryland who felt I was one of the reasons it was in bad shape, and I think that some of the other State insurance commissioners throughout the country were similarly accused.

The ones that are accused of putting the insurance industry in a bad condition are also accused by the people who buy automobile insurance of being too generous with rate increases.

I think the public, as near as I can appraise it, is extremely dissatisfied with the performance of the industry, and rightly or wrongly, they don't want it to continue the way it is.

The understanding on the part of the public, however, of no-fault is extremely slight.

Three years ago, or about two and a half years ago, I was not then persuaded, as I am now, that we should in this country turn to a no-fault concept. However, I did think it was important enough to attempt to have it studied in Maryland. As, of course, you gentlemen know, I guess the insurance industry is the last sizable industry that is State regulated instead of Federally regulated.

So I thought it was desirable to have it studied, and I caused to have introduced a resolution—and you know of the slight power a resolution has, even if it is passed. But this resolution would have called for the appointment of a gubernatorial commission in Maryland to study the whole subject without any preconceptions as to whether or not a no-fault system should not be adopted, but certainly to address itself to that question.

The upshot of it was that not only did that resolution, mild though it was and effectual though it might have been, not pass, it did not even get a hearing. The reason it did not get a hearing is one of the, shall I say, peculiarities of our State governments, pretty generally.

Most of them are part-time legislatures, and I am a part-time legislator in Maryland myself, and all of us in the State legislature of Maryland are subject to ability in conflict of interest.

There wasn't any question that the reason why the proposal to study the no-fault concept in Maryland died because there were a large number of persons, particularly lawyers, on both the plaintiff's side and on the defendant's side who live off the system that now operates, and they, needless to say, saw no reason to disturb it.

The proposal, as I say, died. It wasn't the first of its kind.

Later, under Governor Agnew, we did try to make the proposal a little more appealing, but before we could really get going he disappeared, as you know, to higher glory.

This last year in Maryland a no-fault bill was introduced over on the House side. It, too, died ingloriously. I didn't even bother to introduce one on the Senate side, although I might next year.

I think it is an idea that is gathering strength, as it should. Although I was once unpersuaded of it, I am now persuaded that, first, we have got to do something fairly fundamental; not inordinately radical, because the system is so extremely unsatisfactory the way it is.

I have come to the conclusion, at least, that one element in reform should be no-fault.



You have all heard copious statistics relating to what fraction of the premium dollar actually goes to the people who are in accidents. Of course, even of that, whether it is 55—in Maryland it was generally 65 cents out of every dollar, and I think that is far, far too low anyway. They ought to be able to market insurance for 5 or 10 percent and not for 35 cents out of every dollar.

But in any case, even if it is 65 cents, you have to remember that it is out of that 65 cents that one receives out of the premium dollar that all of these lawyers have to be paid in the many cases where litigation is involved.

I think that we do need a new system. I think it should include some element of no-fault.

I will just say one other thing, and that is to remind you, if you haven't already been reminded too much, of the opposition which was brought to bear against the idea of workmen's compensation. I have done a little proselytizing, and I think it is one of the more useful arguments you can use: that is, back when workmen's compensation was first proposed, it was said to pay people, even though they were negligent and careless in a factory and, therefore, caused an accident, that would cause a great increase in the severity and frequency of factory accidents.

Of course, the history has been that factories are now one of the safest places in the world to be, possibly comparable to this hearing room. I don't know.

But at any rate, the severity rate and frequency rate have declined continually for decades, and it turns out psychologically that people don't want to have their hand cut off in a buzz saw, even though they will be compensated.

I think the same type of attitude will prevail among our drivers. People don't want to have accidents, even though they will be compensated if they do have one. They don't go out looking for accidents. They don't go out being careless on purpose.

Now, there is a lot of carelessness at present with a system that is supposed to inhibit carelessness. But it hasn't been particularly successful in inhibiting carelessness, and I don't believe there would be the slightest reason to expect that carelessness would be promoted should we go to a first-party system where you go to your own insurance company, just as you do in workmen's comp, just as you do on all fire insurance.

Occasionally, people burn down their houses in order to get the money and, of course, it is fraud when they do. But by and large people are able to deal with their own insurance company very successfully. That is what they would be doing under a no-fault concept, of course, in connection with auto insurance.

That is all I had to offer, but I would be happy to answer any questions, if any of you care to pose any to me.

Mr. ECKHARDT. Senator, thank you for your very cogent and articulate statement. I think, for the record, we might say that your distinguished Governor did not exactly disappear in the sense of becoming invisible.

Senator STEERS. I think that is a rather cogent and articulate way of putting it.



MR. ECKHARDT. I think we are particularly lucky in having a man who does have your background here, because we are discussing the question of State and Federal relationship. I might say when you used the term "Maryland" in terms of your legislature, you could have used "Texas" and you would have been just as accurate. And, I suspect, you could substitute any one of the other States and the result would be the same, with the exceptions of possibly California and New York.

Senator STEERS. Didn't something pass in Massachusetts, or did it not?

Mr. ECKHARDT. It certainly did.

Senator STEERS. I know that several of them have this under consideration.

Mr. ECKHARDT. I think one thing you said, which is very material to this question, is that in most States the members of the legislative body are engaged, and must necessarily be engaged, in some private occupation. For instance, in Texas, the legislature meets only every 2 years and pays \$4,800 per year. This may be unusually low, but I don't think it is——

Senator STEERS. I will throw in there that New Hampshire pays \$100 a year to their legislators, and if there was anything clear, it is that they have to have some outside source of income.

Maryland has recently greatly changed its compensation. I am now getting \$11,000 a year, and on the theory that I only have to work 90 days, it is not too bad. I believe it is comparable to what Congressmen get.

But the truth is that, of course, we don't work 90 days; we are in session 90 days. Regardless of that, I would agree with the general drift of your remarks that because of this built-in conflict, there is a problem of attacking the insurance field, or, I guess, most any other difficult, complex field via the State route.

Although I am more or less satisfied that we ought not to go wholesale over to Federal regulation of the insurance industry, I don't think it would be the end of the world if we did do away with the State regulation. I think it is working in some areas.

For instance, the matter of insolvency, which, as you know, is before the Congress, the Magnuson committee in the Senate, I guess, is at least one area where they are considering it, and it has been dangling there a long time.

Maryland did finally pass an insolvency statute; in fact, two of them, one covering the life and health areas, and one covering the property insurance area. But it was a tough struggle, and I had to batter at them for 2 years, you might say, preliminarily, and this year we finally got it out.

What I am saying is that although the problem of the automobile industry can be met at the State level, as one who was in the State picture, I don't think it is one of those things that is handed down on a graven tablet that must remain that way. And if the States don't get busy on the no-fault concept, I think it will be incumbent upon the Federal Congress to do something about it.

Mr. ECKHARDT. Thank you.

Mr. Broyhill?

Mr. BROYHILL. Mr. Steers, how large a staff did you have when you were insurance commissioner in Maryland to regulate the insurance industry?

Senator STEERS. One hundred, roughly.

Mr. BROYHILL. What percentage of that staff was involved in the administration of the automobile liability law?

Senator STEERS. We didn't conceive it exactly that way or organizationally break it down that way. Our examination division, for instance, dealt with both life and health and property. The only basic way I can respond to that is stating what the basic elements in 100-man staff were.

We had one assistant commissioner in charge of life and health. He had about 25 or 30 or so. So they are eliminated.

Then we had a division that was in charge of property insurance generally, but that included fire and ratemaking, and all kinds of other aspects.

Were you thinking of including ratemaking?

Mr. BROYHILL. Would it be about half of the staff?

Senator STEERS. It certainly was not as much as half. If a very rough figure will do, I will say that not more than a quarter of those people were in anyway really directly connected. Of course, we had quite a number of our 100 who were concerned only with agent licensing. The fact that some of the agents were involved in selling auto insurance, you could see they had something to do with it.

Our toughest, knottiest problem from the view of the commissioner—of course, ratemaking and auto ratemaking occupied a very large percentage of my time. When I first came in, I didn't know an insurance rate from the corner lamp post, and there are those who felt I didn't know it much better when I left. At any rate, I felt I learned something, and I certainly put a lot of it down on paper for my successor, which I wish my predecessor had had time to do.

But I think that the underlying reason why you have an unsatisfactory national situation is not really because the insurance industry people are more stupid or less provident than the average industry man. Indeed, I think the insurance industry is one of our better industries, but it has been afflicted with hyperinflation more than any other industry.

I would like to summarize it by referring to the two types of repair that have to be paid for by auto insurance companies. One is body repair, meaning automobile body repair, and the other is also body repair and that is human body repair.

Auto repair and hospital costs, which is human body repair, have been two of the elements in the cost of living index which have risen much more rapidly, almost, than any other.

I think that is what is behind the problem, and it is also an explanation of why we have so little talk about life insurance. One of the reasons is that whereas the cost of hospital insurance has gone up, and that is connected to the medical profession, the other half of that particular coin is that doctors have been successful in prolonging the life span and the cost of life insurance has basically been trending downward because of our longer lives. That is why you don't have a big public clamor for rate control in the life insurance industry.

Mr. BROYHILL. Do you feel that the Federal Government would be able to take over these regulatory activities that you were in charge of?

SENATOR STEERS. I don't think there is any question they could.

MR. BROYHILL. It would be a sizeable staff?

SENATOR STEERS. Of course, it would. Furthermore, I think it would be a huge job to shoulder it. I presume that if it were done on a wholesale or complete fashion, of course, you would do away with all of the State regulating agencies.

MR. BROYHILL. Is there any possibility that some plan could be worked out with a Federal-State partnership?

SENATOR STEERS. Yes; I suppose so. But you would have, you know, 50 partners. It is not very easy. I think, of course, that you would find a great deal—well, you know there is a great deal of opposition.

I don't really know what stage you are in in your own thinking here in the Congress, but I think it would probably be a big mistake to try and do a complete and radical surgery job on the whole insurance industry all at once. I think maybe step by step.

MR. BROYHILL. Well, meat inspection does it and pipeline safety inspection. States are doing it on this level.

SENATOR STEERS. Yes; you can divide the job. I might mention, that we have an unsatisfactory situation in the State of Maryland. Although it was not introduced this year, the Governor of Maryland, Governor Mandel, has already announced, I think it was about a year ago, that he was contemplating a State insurance company. I think this is an outgrowth of the mid-Atlantic Governors' conference. You may be aware they have come up with the idea of creating State insurance companies, auto insurance companies, which would provide insurance.

I don't suppose any of them have thought of it as a mandatory thing that you would have to buy from it, but since it would be subsidized, it would probably pretty well take over the market, and it might be that the private insurance companies would be left with the excess beyond the minimum limits part of the market.

Anyway, there is the expectation that the Governor's study commission, which is now studying, will probably come up with some kind of a proposal of that nature in time for the next January session of the Maryland Legislature.

MR. BROYHILL. No other questions.

MR. ECKHARDT. Mr. Ware.

MR. WARE. I may have misunderstood you. I got the impression that you referred to the cost of marketing as 35 percent. It is my recollection that the 30 to 35 percent represents not only the cost of the marketing—the agency fee, but the administration of the policy.

SENATOR STEERS. That is correct. Of course, you have probably also seen other figures that show it running up to 45.

At any rate, I think that I should more properly have said the cost of marketing and the cost of administration together are far in excess of what they need to be, and I think you know that the standard agency fee for long time, although it is being eroded in various ways by the companies and because of price competition, you might say par has been 20 percent for the agencies' percent, and, frankly, that is not excessive from the point of view of the agency. It is just an inefficient way of doing it.

We have to go to mass marketing where you can do it cheaply. The procession toward mass administration has gone very well. In other words, they have computerized the billing procedure, and that is why



the cost of administration has dropped down, but the cost of selling, in my opinion, we have to get away from this individual tailoring and this concept which our beloved agents are constantly talking about and how they perform a great service by talking to their customer and giving him service.

Well, a car is a car and the public is no longer interested in that tailored service. For commercial insurance, you have an entirely different picture and perhaps for life insurance and health insurance. But for auto insurance, in my opinion, the cost of marketing could be minimized way, way down.

Of course, under a State insurance company, it will be minimized down to basically zero.

Mr. WARE. That is all I have.

Mr. ECKHARDT. Mr. McCollister.

Mr. MCCOLLISTER. I have no questions.

Mr. ECKHARDT. Thank you very much, sir. There is one question I would like to ask you and that is with relation to the questions Mr. Broyhill was asking.

I understood from your testimony that a great amount of work of the 100 men had to do with the rate structure of the insurance companies.

Senator STEERS. No. I misled you. I indicated to you that a great percentage of my time was spent on ratemaking because I regarded it as a most sensitive and difficult task, but as far as the number of men, in the Maryland case I could look to about three men to get any assistance at all on ratemaking.

I would say that it is a very intricate science which is very well understood by the high-priced experts who work for the companies. My impression is that, with one or two exceptions, such as New York and maybe California, the expertise which exists in the State insurance companies is pitably weak, and it was in my department. I had to start from scratch, and I would have been utterly confounded and dumbfounded had I not had some background in mathematics.

Mr. ECKHARDT. What was the general work that the 100 men performed?

Senator STEERS. Let me say that the basic thrust of the State insurance divisions throughout the country is prevention of insolvency. That is an important function. It had come to be, say 10 or 15 years ago, practically the sole function, and the rate regulation aspect was pretty much whatever was applied for was granted.

The theory, of course, was that competition would prevent anybody from requesting more than was justified. Maybe it was working then, but it certainly wasn't working more recently.

So I would say fully 50 percent, I guess, of our people were involved in one way or another in the examination process, the examination being a very, very long involved thing which only happens every 3 or 4 years, a system with which I strongly disagreed. I thought it should be a far more cursory and far more frequent look.

At any rate, it is an extremely long look, every 3 or 4 years, depending on the company, and it is comparable to what would be referred to in other lines as an audit, and the examiners correspond to the independent CPA's who do the job for General Motors and so on.



Mr. ECKHARDT. This bill, as you know, is mostly devoted to the proposition of determining standards for liability. This would not necessarily interfere at all with the activity of the commission which you headed; is that not correct?

Senator STEERS. That is correct. I think that is a fair statement, and I think that is probably a good approach as a first step by the Federal Government, which is not to take over the administration, but to create standards which the States must meet subject to a takeover if they don't meet them.

Mr. ECKHARDT. Thank you, sir.

Our next witness is Dr. William H. Wandel from the department of insurance and risk of Temple University.

**STATEMENT OF WILLIAM H. WANDEL, PH. D., PROFESSOR OF  
INSURANCE, TEMPLE UNIVERSITY, PHILADELPHIA, PA.**

Dr. WANDEL. Thank you. I appreciate very much this opportunity to make a statement. I speak only for myself, although I will say that I have been a student in this field for a long time.

In 1929 I made a study of auto insurance and particularly of the experience of the victims of automobile accidents and over the years have continued to make studies and inquiries into the field.

My views were solicited with regard to H.R. 4994, and the Congressional Resolution 241. I will address my remarks only to those, and will undertake to dwell only on certain major points.

First, as to the general issue of providing reparation on a no-fault basis.

**REPARATION ON A NO-FAULT BASIS**

In the words of House Concurrent Resolution 241, "\* \* \* It is now almost universally conceded that there is an imperative need for prompt and far-reaching reform." H.R. 4994 and House Resolution 241 agree that the reform needs to take the form of a rational and equitable reparation system providing (a) benefits payable on a first-party, contractual basis by the insurer who has contracted with the insured, (b) benefits payable to all accident victims without regard to fault (excluding those who willfully injure themselves) and (c) compensation for all economic loss, including costs of rehabilitation, up to (by implication and House Concurrent Resolution 241 and expressly in H.R. 4994) high limits, eliminating the right to sue for damages provided under the first party benefit provisions.

A vast array of evidence exists to demonstrate that the problems of the existing system of reparation stem directly or indirectly from its adversary character and its reliance on the establishment of sole negligence on the part of the alleged wrong-doer in order to make possible any recovery by the victim. The evidence also points to the fact that recovery is virtually dependent on the possession by the defendant of effective liability insurance in amounts equal to or in excess of the loss suffered. Difficulties encountered in proving negligences, denial of payment of loss, delay in payment, payments in amounts not related to the loss, litigation costs, noninsurance or inadequate insurance—all contribute to an inefficient, costly system of reparation not responsive to the needs of traffic victims. So the objectives of these bills are sound.

I do raise questions, however, about the advisability of retaining in any degree the right of tort action in cases of automobile accidents. Even those who are most critical of the so-called no-fault approach are quick to point out that when there is any possibility that the party to the accident who has liability insurance may be sued, the expensive processes of investigation and determination of fault will have to be pursued. The resolution is not clear as to what may be permissible as a basis for tort action but even the limit for economic loss suggested in H.R. 4994 leaves, in my opinion, too much room for suit, especially in terms of the "catastrophic harm" for which claim can be made. The volume of cases which will have to be investigated and on which some decision of potential liability will have to be made is not to be measured by the actual number of cases which turn out to produce catastrophic damage, but the number which potentially might do so. This number may cover a very broad segment of all accidents.

Further, from a logical point of view it seems inconsistent to show concern about adequate recovery for loss by those suffering "catastrophic harm", but to leave their recovery to the lottery of the fault system and then not even make liability insurance mandatory. We know that it is those suffering the greatest losses who fare least well under the present system and that the right to sue will have little or no meaning if the defendant does not have fully responsive liability insurance. I am not, of course, urging mandatory liability insurance—quite the contrary. I do urge adequate first-party benefits as the sole source of recovery lest the "reformed system" be saddled with the defects now inherent in the existing system.

Another inconsistency associated with the one just mentioned is the requirement in the bill that an insurer must offer liability coverage along with the first-party coverage. What this means is that there will be retained in the system the use of underwriting criteria which may be appropriate for liability insurance but not for accident and health insurance. It is the use of these liability insurance underwriting criteria which have caused so much difficulty in the classification of risks and the availability of insurance under the existing system.

For much the same reasons, I would also suggest consideration of making the exemption from tort also applicable to property damage to motor vehicles, with the possible exception of when the vehicle suffering damage was hit when not moving. Failure to provide this exemption could result in an unjustified volume of claims under property damage liability and prove to frustrate the objectives of a no-fault system.

To repeat, I believe that an adequate first-party system of benefits should be the sole source of recovery. Any provision for resort to action against third parties will be a wedge into the system, which, with a little ingenuity, can be a significantly expanding wedge. It will mean the retention of expensive investigatory and fault-determining procedures. It will afford opportunities to make claims for intangible damages which serve more to support the costs of litigation than to relieve the anguish of the victim.

It will cause discrimination among insurance applicants according to liability underwriting criteria rather than accident and health criteria. It must be remembered that insurers will be free to meet any public demand for coverages in excess of that required by law.

Additional benefits under such optional coverages would not be subject to a determination of fault or the defendant's having effective liability insurance.

I am constrained to make a brief observation about the no-fault issue as it is so often presented in the press. People's moral sensitivity is appealed to. The guilty, especially the drunks, should pay for their misdeeds. But the present fault system depends on the existence of fault insurance. Car-owners are required to buy liability insurance so that an insurance company will defend them and pay losses due to their negligence, most particularly if they are grievously at fault. Obviously these losses are paid from funds supplied predominantly by those who are not responsible for losses, not by at-fault drivers. Negligent drivers and drunks should be punished, but this function cannot be served by an insurer, especially one contractually bound to defend the wrong-doer. The legal profession and the insurance companies have, in my opinion, done a poor job of educating the public on the true nature of liability insurance.

#### FEDERAL VERSUS STATE ACTION

The resolution would look for the adoption of reform plans by the States over time; H.R. 4994 would take direct Federal action now.

Secretary Volpe reiterated in his statement before the Senate Commerce Committee on March 18, 1971, that "the present system needs change badly and needs it now." I fear that the approach taken by the resolution is one under which very substantial delays might reasonably be expected in attaining even the general objectives of the resolution. I am recalling my own experience with the adoption of State unemployment insurance legislation. All the States adopted legislation bringing them into the unemployment insurance system within 2 years after the passage of the Social Security Act but only in the face of a strong penalty for failure to act—loss of revenue from an employer payroll tax. In a situation in which a meeting of minds in 50 legislatures may be difficult, without Federal sanctions, with no clearly defined guidelines and, in some States, Constitutional problems, I would expect action to be very slow.

This course also invites diversity in State laws that, in a field so distinguished by interstate travel, may result in extremely complicated problems. Those opposed to pending legislation in New York State have pointed out some of these problems, especially for adjacent States. Obviously a policy holder will need protection wherever he travels in the United States. Wide diversity in State laws can create nightmares. It is hard to conceive of interstate standardization of policies under the conditions created by separate State actions. Nor is the diversity justified as a basis for winnowing out the chaff and eventually raising the standards of all States to those of the best. This kind of expectation is not likely to produce the hoped-for result for several decades, if ever, if our experience with workmen's compensation legislation is any measure.

If you believe that reform of the automobile insurance system is needed now, then I think it can only be brought about, with a degree of consistency consonant with dealing with a national problem, by Federal action which will define a first-party system and set aside



the fault insurance system. Correction of defects in the program can be detected and corrected more promptly by one legislative body than by many. Changes can be anticipated over the years, but retreat to a fault system is not conceivable to me.

#### COORDINATION WITH OTHER BENEFITS

Avoidance of payments from multiple sources which would have the result of providing compensation in excess of sustained loss is recognized in both the resolution and H.R. 4994 as desirable and would be in accord with sound insurance principles. The resolution expresses the belief that benefit sources should be coordinated with a view to making automobile insurance the primary source whenever feasible. H.R. 4994 is specific in making the benefits payable under its provisions excess to those payable under any other private or public plan. However, the bill in effect invites other plans to specifically exclude from their coverage benefits that would be otherwise payable under the proposed automobile plan. The approach taken by the bill may be the only one feasible at this time to avoid duplicate payments although problems can be expected in identifying and verifying the nonautomobile plan sources. Within a reasonable time other accident and health insurance plans may be expected to exclude automobile losses as they now do those covered by workmen's compensation.

#### UNIFORM STATISTICAL PLAN

I have serious reservations about section 6 of H.R. 4994. While recognition should be given to the need for surveillance of insurers' experience and rates, there is great danger in imposing rigidity and strait jackets onto a situation that cries for flexibility and, hopefully, some innovation. It cannot be over-emphasized that the adoption of a bill of the import of H.R. 4994 will very largely move the automobile insurance industry from the ball park of fault insurance into the ball park of accident and health insurance.

This is not a wholly uncharted sea. Experience can be drawn from past experience of automobile insurers with the medical payment coverage and from general experience in the health insurance field. However, frozen rate territories, as known in automobile insurance currently, may be quite inappropriate. New classifications based on age, family size and income will be called for as new ways are sought to relate premiums to the risk insured. Hopefully, rates can be related to the degree of protection against personal injury afforded by the car itself. Companies writing predominantly health insurance may wish to enter the field. The new automobile coverage could be comprehended within a group health insurance plan by endorsement. Senator Steers spoke of the desirability of mass merchandising. I would hope that section 2(5) would be amended so that the definition of "insurer" would clearly permit this.

Employers may contribute to the premium. The plan in this bill apparently contemplates deductibles to recognize the existence of other sources of benefits. How quickly will they be standardized and with what impact? The bill also gives a role to rating bureaus, historically used in automobile liability insurance but not in health insurance.



My point is simply that I believe most companies will need a great deal of freedom in devising and applying rates for these new benefits and that the public will benefit from such freedom as long as it is exercised in a competitive environment. Structuring has inherent possibilities for inhibiting, not enhancing, price competition. I believe that freedom at this juncture is much more vital to the public interest than a uniform statistical plan.

#### BENEFIT STRUCTURE

I believe that the benefit structure outlined in the bill needs more spelling out in certain respects, for example, as to the determination of amounts which will be due to survivors. In other respects the provisions seem too detailed and complicated, for example, with regard to the calculation of monthly wage loss. The latter could be greatly simplified by use of employer quarterly wage records which he must keep for reporting under the OASDHI program.

I would also commend to the committee's attention a feature of the plan being advanced by the nationwide insurance companies which would both strengthen the provisions for rehabilitation by making them an integral part of the benefit structure and provide, through an adjustment of the benefit formula, a financial incentive for the individual to resume gainful employment. The latter is a device borrowed from successful experience under unemployment insurance. In any event, it could be very disruptive to a rehabilitation program to terminate cash benefits prior to completion of successful rehabilitation.

#### REQUIREMENT TO WRITE AUTOMOBILE INSURANCE

I am not speaking to the point of restriction of cancellation or refusal to renew. I am not speaking to those restrictions at all. But the bill would require an insurer to accept all applications for the required policies except that it may reject or refuse to accept additional applications if the domiciliary state supervisory authority deems in writing that the solvency of such insurer would be impaired by the writing of such additional policies. Such a requirement seems to me to infringe much too severely on the defensible rights of an insurer's management to withdraw from a line of business if it feels that ordinary prudence in the conduct of the business warrants such action; it should not have to seek a public statement that its solvency is endangered. Indeed, I believe that any company would be seriously discouraged from entering this line of business, or writing its first group automobile insurance policy, if it knew that it could never withdraw without pleading threat of insolvency.

We are not dealing here with monopolistic suppliers of services as in the case of public utilities. Actually it may reasonably be expected that competition will be stimulated and that the insurance product under the proposal will be substantially more available than the present automobile liability product because more applicants will be desirable (especially among the young, the elderly and servicemen) and there is likely to be a narrower spread in premium rates. Any residual problems with regard to a restrictive market might better be handled by a reinsurance facility to which all companies would have access.

In summary, this statement:

(1) Supports a reform of the existing automobile reparation system which takes the character of substituting full reparation for economic loss without regard to fault in lieu of the lottery of the existing fault insurance system;

(2) Objects to compromises which retain opportunities to pursue recovery under the tort system on the grounds that these compromises:

(a) Will undermine the savings that could be achieved if it is not necessary to determine fault;

(b) Will, ironically, identify only the most serious cases as entitled to pursue action in tort, when, as has been established, success in that action is dependent on the vagaries of negligence law and on the existence of responsive liability insurance;

(c) Will provide an expandable wedge for resort to tort action; and

(d) Will encourage the retention in the classification, rating and acceptance of risks, underwriting standards which will continue to restrict the market for automobile insurance.

(3) Suggests that automobile physical damage should also be included in a no-fault system.

(4) Endorses Federal action to achieve by a prescribed date an adequate and consistent pattern of automobile accident reparation.

May I interject here. My statement was written before I had seen yesterday's New York Times and its report of the possibility that had been discussed the day before yesterday in this committee of having Federal standards to which States would be expected to meet.

If I may suggest, I think before that route is followed, study be given to the experience in unemployment insurance where there are Federal standards which States have to meet, where the initial laws have to meet the standards, where it was also necessary to require that along with the legislation be methods of administration reasonably calculated to assure that the standards would be followed, that subsequent legislation also meet the standards, that any regulation issued by the State supervisory authority meet the standards. It can be a perpetual headache. I just urge thorough investigation of that approach before it is taken.

(5) Endorses provisions to preclude duplicate payments for the same loss when such payments would exceed the economic loss incurred;

(6) Questions seriously the prescription of a uniform statistical plan on the grounds that it will inhibit the competitive and wholesome development of rating plans of advantage to the public;

(7) Suggests the need for some changes in the benefit structure; and

(8) Questions seriously the advisability of requiring an insurer to accept all applications for insurance on the grounds that entry of insurers into this line of business will be inhibited and the freedom to withdraw unreasonably denied.

Thank you for this opportunity to testify. I would be pleased to be of assistance to this committee or its staff.

Mr. Moss. I thank you for making yourself available to us.

Mr. Eckhardt?

Mr. ECKHARDT. Dr. Wandel, I think your testimony has certainly been extremely helpful. You have touched many points that need to be considered.

I gather that you are saying, as perhaps a major point of your testimony, that the first-party insurance system benefits should be the sole method of recovery of damages in automobile collision cases?

Dr. WANDEL. That is right.

Mr. ECKHARDT. I rather agree with you. We look at the question of how we would handle the question of tort liability in addition to it, because we are either faced with a system by which a person may go into State court making his claim for tort liability independently of the Federal court and independently with the procedures under the law, or we are faced with the proposition of channeling all of the cases first through the Federal court for some preliminary determination with respect to jurisdiction with respect to tort or no-fault liability.

The first seems to me to be one in which we invite litigation and the State court parallels the Federal court and could cause tremendous confusion. For instance, if it was determined that the permanent-partial disability was less than 70 percent, whereas if we used the other system we run into a tremendous loading of the Federal court of every kind of case which might ultimately result in a tort case.

I don't know how to resolve that except to choose one channel or another.

Do you agree on that?

Dr. WANDEL. Yes, as I understand you, I do agree. And it is because of some of these difficulties that were discussed earlier this morning of determining what is permanent, total or partial.

There have been volumes written about disfigurement.

I think it would be possible—and for this reason I suggest further consideration of the benefit formula—to go beyond some of the provisions which are in here to try to catch some of these hard cases.

Mr. ECKHARDT. That is what I was getting to next. If you are going to embrace all of the cases under a first-party insurance system, it would seem to me we need a much broader possibility of coverage than what we presently have in section 14, Roman II on page 4.

As I see that provision, what it really envisages is payments for disability as you go. In other words, when you have been knocked out of work for a period of time, you receive your pay at this point, and this is particularly true when you look further to section 3 on page 11, where it says:

“Payments for net economic loss shall be made as such loss is incurred.”

I see no possibility here of a lump sum settlement with respect to an extended permanent-partial disability.

It seems to me that if your cut out possible tort liability, you must embrace some process by which, say, the 50 percent disability case is covered.

Incidentally, this bill, as written, doesn't cover that either under tort or under no-fault liability.

That is the thing that troubles me. It seems to me you have just got to consider those hard cases in a little more extensive way than a limitation of 36 months or \$36,000.

Dr. WANDEL. I would agree. I think the benefit provisions need to be reexamined from that point of view, starting with the proposition that this is going to be all that is going to be provided for under this system.



Now, we do have to remember, of course, that there will be special opportunities for optional additional insurance. The violinist to whom the functions of his fingers is so important, of course, can insure for the loss of use, beyond anything else.

Mr. ECKHARDT. But that doesn't take care of the working man, for instance, who is permanently disabled.

Dr. WANDEL. That is right. I just wanted to remind us all that the optional is there, but I think for the vast, vast majority of people whom we are thinking of, there ought to be provisions in here.

I might reiterate the point I made earlier. It seems to me to be very unreasonable to say that there ought to be something for these people and, yet, make it a matter of chance as to whether they are going to get it—and it is really a matter of chance.

We had a case in the Philadelphia area recently that was written up in the papers. It was one of these hard cases. A girl was severely injured and probably disabled for life. She made a recovery after some extended litigation of over \$1 million from the Federal Government. The car was operated by a serviceman, and it was, as they call it, a target case. It was a beauty.

She could just as well have been hit by a man driving a stolen car fleeing from the scene of a crime, in which case she would have gotten nothing. It is just a matter of chance.

I think it is much better under an insurance program to provide security and go, as you suggested, as far as one can imagine, to take care of all of the cases.

Mr. ECKHARDT. One other thing. Did I understand you to state in your testimony that you would like to cover the whole field of automobile collision cases, including both property and personal injury?

Dr. WANDEL. Yes, sir, I said that.

Mr. ECKHARDT. Thank you, sir.

Mr. MOSS. Mr. Ware?

Mr. WARE. Nothing further.

Mr. MOSS. Mr. Guthrie?

Mr. GUTHRIE. This is a very perplexing problem we are dealing with here, Dr. Wandel. First of all, I want to thank you. Your testimony has been most helpful.

In going over to a completely no-fault system, how would you take into account such things as disfigurement and emotional suffering?

Dr. WANDEL. Emotional suffering I don't take into account at all. I don't know anyone who has ever been able to give it a value. It is in general damages, so called; the pain and suffering is in there somewhat.

An answer may be given that a jury determines the general damages and pain and suffering, but they don't, to the best of my understanding. You cannot get from a verdict an identification of what the pain and suffering was, the anguish.

We only know one thing about what is included in the general damages, pain and suffering, whatever you want to call it, and that is that the plaintiff's lawyer's fee is there. That we know. What else is there, we don't know.

No one has ever been able to define it. I think it has been proposed in some plans—you will remember the so-called guaranteed benefits plan of the American Mutual Insurance Alliance. They would have



added an element for pain and suffering based on wage loss. Fifty percent of wage loss would be added in, just as something special. I don't think that makes any real sense.

The AIA and others have said that it could be related to the medical expense, 50 percent of medical expense.

Well, there could be minor medical expense with serious disfigurement. I don't know how you do it, and it is not done in workmen's compensation and it is not done in health insurance.

Mr. GUTHRIE. How about the loss of a member?

Dr. WANDEL. Well, that is something else. This comes back to another look at the benefit provisions. It is conceivable that the very loss of a member, as in workmen's compensation, could have set values.

I shrink from that because these set values get out of date. Of course, it is not only a loss of a member, but it is a loss of use and loss of function. I would like to keep it as near to the actual economic loss suffered as possible.

Mr. GUTHRIE. Could you give us a reaction—I know it is impossible in this context to cost it out—what are the relative costs of insurance provided or acquired by the bill with a completely no-fault system? Is it going to cost the individual more, or is it going to cost him less? Do you have any reactions you could provide us with in this regard?

Dr. WANDEL. Just some reactions. I don't think a program for full compensation would cost much more than the \$36,000 limit.

Mr. GUTHRIE. I am thinking in terms of premiums, too.

Dr. WANDEL. Yes, and bear in mind some of the other things I have said. One, the elimination of pain and suffering itself is going to result in a substantial saving in costs in comparison with the present system.

If you eliminate torts, you will, I am confident, reduce substantially the costs of so-called loss adjudgment, the investigation which, even if minimal, is not cheap.

There are other things that insurance companies now do in pursuing subrogation in inter-company arbitration, and that sort of thing, which add up to many costs.

There are so many possibilities for cost savings that in comparison with the present system, I just have a great deal of faith that it will compare very favorably.

Now, as was pointed out by Senator Steers, we all must face the fact that under any system costs over the years are going to go up, because medical expenses are going up and wages are going up.

Mr. GUTHRIE. At another point in your testimony you object to the requirement that companies would be required to sell insurance to individuals who come to them and are licensed. I know you were in here when Mr. Hutton from the National Council of Senior Citizens was testifying, and being aware of the fact that there is no rate regulation in these bills, how do you answer the problem that he raises?

Dr. WANDEL. Mostly, he was talking about cancellations and refusals to renew. My remarks were not addressed to that. I am not raising questions about putting restrictions on the right to cancel or the right not to renew.

Mr. GUTHRIE. How do you distinguish between cancellations and refusals to renew and a refusal to sell to a person who comes in for the first time?

Dr. WANDEL. Well, of course, in the last case it is new business, and if there is a fair degree of freedom to write, I don't honestly believe there is a serious problem. I am biased, perhaps, a little bit. My mother will reach her 90th birthday this year, and she has auto liability insurance.

Incidentally, she chose her present company long after she was age 65.

What I am really complaining about—and I would like to make this clear—is that it seems to me that responsible managements do sometimes reach the point where they say that this line of business is one which we would rather not engage in for the future. We don't cancel anybody; we won't fail to renew anybody, but we want to let it run off.

I don't see why they shouldn't be permitted to do so.

Mr. GUTHRIE. You would accept that provision then, with the qualification that where an insurer intends to phase out of that line of business, and accept no new applicants, and so on?

Dr. WANDEL. That is what I really had in mind, yes. The other case I had in mind I mentioned somewhat incidentally, but it is not really incidental, and that is the position of a company which is contemplating going into this line of business.

I suggested earlier that health insurance companies are ordinarily not writing the kind of auto policy that is contemplated here. The staff of a company may conclude that is a good deal, after making a marketing study, figuring what it would cost, consulting the agents, and so on. They all come to the company president and say to him, "We ought to take up this line." He says, "Well, everything you tell me sounds just great, but you know that once we write our first policy we can never get out." I think if I were the company president, I would hesitate somewhat, knowing that I could never get out.

Mr. GUTHRIE. I would like to pursue this question of the uniform statistical plan. As you are aware, there is no rate regulation provided for in the bill, and this does afford the purchaser some opportunity to see what is available in the marketplace.

Dr. WANDEL. I am very sympathetic with that objective.

Mr. GUTHRIE. It does, it seems to me, avoid the problem that was raised by the Administrator of the Federal Insurance Administration in talking before the bar association up in the city of New York. He pointed to the fact that:

In automobile insurance alone, most States have approved an 11,000 classification system. When multiplied by the approximately 600 ratemaking territories in the United States, this produces over seven million potential slots into which an insured might fall.

It is to that problem or those problems the uniform statistical plan addresses itself, and it should be noted, too, that it is implemented by rulemaking of the Secretary, which is much more flexible, of course, than the legislation. Do you have any comments on that?

Dr. WANDEL. Well, my feelings were triggered by certain things, such as the reference to rating territories, and I thought of this type of testimony that Mr. Bernstein gave.

I think that the auto rating system now is hopelessly complicated with far too much classification. I would think, however, that again if you would look at accident and health insurance—and that is really what we are moving into here—you don't find that kind of a situation.

Mr. GUTHRIE. Wouldn't the Secretary be able to do that?

Dr. WANDEL. Yes, I suppose so.

The other thing, I guess, that triggered me was the reference to rating bureaus, which, again, is a sort of a carry-over. We have them now, and the bill contemplates that we will continue with their use. But, as I say, in accident and health insurance the industry is not used to having their rates made for them by somebody else.

I do emphasize that I think there will be a great need for freedom. It is true, I suspect, that the Secretary, under the authority given him, could permit that. But I am just raising red flags now. I hate to see a system start out being boxed in at various points and the experience has to be reported this way for this territory, and so on.

I know even in auto insurance today there are insurers who would say, "If we just had freedom, we would use a marketing area like New York City and northern New Jersey instead of having to have separate territories."

Mr. GUTHRIE. What requires them to have these?

Dr. WANDEL. State legislation largely. They have to file certain rates in New Jersey and other rates in New York. I guess that is the principle.

Mr. GUTHRIE. Nothing further, Mr. Chairman.

Mr. MOSS. Mr. Ware?

Mr. WARE. To go back just a moment, if I understood you correctly, you would eliminate pain and suffering and emotional suffering and 60 percent or 50 percent or 40 percent of anything; is that correct?

Dr. WANDEL. Yes; I have not encountered any formula that will give, for instance, 60 percent of wage loss or 50 percent of medical expense, that would not under many circumstances prove to be very unreasonable.

Mr. WARE. You are not suggesting that the freedom of the operation of the insurance company, if any company wanted, could not offer that?

Dr. WANDEL. Sure they could.

Mr. WARE. You would not prohibit it?

Dr. WANDEL. No, I would not prohibit it.

Mr. MOSS. Any further questions?

Well, Doctor, I want to thank you. I think you have given us very valuable testimony, and I note your offer in the concluding sentence of your statement, and we may well avail ourselves of that offer before we move much further ahead.

I thank you very much.

The committee will now stand adjourned until 10 o'clock Monday morning.

(Whereupon, at 12:30 p.m. the hearing adjourned, to reconvene at 10 a.m., Monday, April 26, 1971.)



## NO-FAULT MOTOR VEHICLE INSURANCE

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MONDAY, APRIL 26, 1971

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2232, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

At this time we are very pleased to recognize Congressman Mikva, who I understand will introduce our first witness this morning.

### STATEMENT OF HON. ABNER J. MIKVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MIKVA. Thank you very much, Mr. Chairman.

Mr. Moss. I would like to recognize also our colleague Congressman Metcalfe.

Mr. MIKVA. Mr. Chairman, and members of the subcommittee: It is a pleasure to be here. My task is a pleasant one and it takes at least two Congressmen to introduce this gentleman. He is a former colleague of mine in the State legislature and he currently runs with me in a portion of the Second Congressional District. He has been one of the most distinguished State legislators we have had in the State of Illinois for 14 years now. He is an alumnus of Washington. He worked his way through Georgetown Law School as a Capitol guard, so he is not completely new to these confines. However, since that time he has overcome his environment and has done a marvelous job of informing himself on the problems of insurance, both as a legislator and as a practicing lawyer.

It is a great pleasure, Mr. Chairman and members of the committee, to present my colleague, my former seatmate and roommate and my present good friend, Representative Anthony Scariano of the Illinois General Assembly.

Mr. Moss. Thank you very much.

Mr. Scariano, we are pleased to have you here and you have a statement and you may proceed.

### STATEMENT OF HON. ANTHONY SCARIANO, MEMBER OF THE ILLINOIS GENERAL ASSEMBLY

Mr. SCARIANO. Yes, sir: if I may read my statement.

Mr. Chairman and members of the subcommittee, the current auto accident compensation system "needs change badly, and needs it now".



Secretary Volpe's conclusion is certainly borne out by the detailed study conducted by his department.

The Transportation Department's study and final report summarizes on a national level the results of man, many studies, including the landmark Keeton-O'Connell work. All of these documents conclusively, the urgent need for change. I fully support H.R. 7514 and urge you to report it out as soon as possible.

I especially commend the chairman of the subcommittee for sponsoring that bill and for his work in connection with freedom of information and the other fine things that he has done in Congress.

In 1967, after reading the Keeton-O'Connell book "Basic Protection for the Traffic Victim," I sponsored with five of my colleagues a no-fault auto insurance bill in the Illinois House. The bill was modeled after the Keeton-O'Connell basic protection plan. It died in committee. As a matter of fact, I wasn't even accorded the courtesy of a vote on the bill. In 1969, I again introduced a no-fault Keeton-O'Connell type plan. "What are you trying to do," asked my lawyer-colleagues in the House, "repeal our livelihood?" Many of the legislators actively engaged in the insurance business expressed the same attitude. It is not surprising that a good no-fault bill has little chance of passage in Illinois.

We introduced a bill last Thursday in the Illinois House and I don't expect it is going to get any further than it has experienced thus far.

According to the 1969 Handbook of the Illinois Legislature, out of 177 members of the House, 55 listed their occupation as "lawyer," and 25 listed their occupation as "insurance." Out of 58 members of the Senate, 19 were lawyers and 11 were in the insurance business. But, as you gentlemen know, the business of a legislature is conducted for the most part, in its committees and subcommittees. The Illinois House Insurance Committee, to which my no-fault bills were referred, had eight lawyers and four men in the insurance business as members. There were 12 potential votes against no-fault out of a total committee membership of 17. The 12-member insurance division of our senate financial institutions committee had six lawyers and three insurance people on its roster. These data do not include the number of legislators who have an interest, direct or indirect, in insurance companies.

Incidentally, my bill has never had more than two votes in the Illinois House committee, where it invariably dies.

In Illinois, as in most of the States, the job of being a legislator is not full time. Of course, there are some exceptions, as with retired persons. However, nearly all the lawyers in our legislature are actively engaged in the practice of law. A number are plaintiff and defense lawyers.

Now, Illinois is not the exception. Attached to my statement are two presentations of data showing the number of members on State legislative committees having jurisdiction over no-fault bills whose occupations were listed as lawyer and insurance for 10 States in 1969, and the number of members of the same 10 State legislatures who were lawyers and in the insurance business that year. By the way, one-half of the motor vehicles registered in the United States in 1969 were in these 10 States.

An up-to-date survey of the occupations of the members of the committees having jurisdiction over no-fault bills in the 10 States with the largest number of motor vehicle registrations in 1969 show that there were 105 million registered motor vehicles that year, and 55 million were in these 10 States. I ask, Mr. Chairman, that this survey be made a part of this record.

Mr. Moss. Is there objection to the request?

Hearing none, it will be included in the record immediately following the statement of Mr. Scariano.

Mr. SCARIANO. I think we are all deluding ourselves if we expect State legislators who are in the active daily practice of law, or who are selling insurance, to enact good no-fault plans similar to H.R. 7514, or containing the type of benefits outlined under the Department of Transportation's "specific recommendation" at pages 133-137 of its final report. And those who suggest that such meaningful reform can be brought about at the State level during the next 5 years, and urge the public to support a State-by-State approach, are playing a cruel hoax on the long-suffering auto accident policyholder and potential victim.

A number of State constitutions prohibit limitation of the amount which may be recovered in actions for wrongful death, or in any suit for personal injury or death. Some of these States are: Arizona, Kentucky, New York, Ohio and Pennsylvania. (See: "Constitutional problems in Automobile Accident Compensation Reform," Department of Transportation, April, 1970, p. 43, footnote 19.) Obviously, it will take longer in these States to enact no-fault auto insurance.

Even if the States were to enact reform now, what would their programs be like? Take for instance the Illinois auto reparations plan made public early this month by Governor Ogilvie and Insurance Director Baylor. This proposal provides for some compulsory medical and wage benefits to be paid by an injured person's own insurance company on a first-party basis, but retains completely the fault liability concept for everyone and for all claims. It goes under the name of no-fault, but I think it is one of the most spurious no-fault bills introduced anywhere.

This plan would increase litigation and would require motorists in Illinois to buy the mandatory first-party coverage as well as liability insurance—thus two policies would be sold the public. Director Baylor's letter transmitting his insurance department's plan to Governor Ogilvie contains the following concluding paragraph:

"By the adoption of the Illinois Plan, our State will be in the vanguard of improvement to the reparations system. In so doing, we shall fulfill by action our promise, 'In the New Illinois, We Accommodate'."

I commend the Illinois insurance director for his candor. The Illinois plan, if ever enacted, would indeed "accommodate"—the pocket-books of lawyers, insurance companies and their agents.

That the Governor's benefit program for lawyers and insurance companies is not fooling everyone, I submit for this record a copy of a column by Jack Mabley in Chicago Today, April 15, 1971. A copy of that column is attached to my remarks. With your permission, Mr. Chairman, I would like to provide also for this record a copy of Prof.

Jeffrey O'Connell's paper criticizing the Governor's plan. I thought I had brought it with me, but I discover that I didn't. May I have leave to submit that later? I would like to have that made a part of the record and a part of my remarks in this case.

Mr. Moss. The unanimous consent request that the item by Prof. Jeffrey O'Connell be inserted in the record following these remarks and the reservation to accommodate that request is made. Is there objection?

Hearing none, it is so ordered.

Mr. SCARIANO. Thank you.

If the enactment of a no-fault system beneficial to all the people is the national goal, as this administration claims, then as a State legislator with over 15 years' experience, I cannot understand how that goal is going to be achieved on a State-by-State basis. There must be a national program as envisioned in H.R. 7514.

Gentlemen, I repeat, I support H.R. 7514. Thank you.

(The attachments and articles referred to follow :)

ABLE 1.—MEMBERS ON STATE LEGISLATIVE COMMITTEES HAVING JURISDICTION OVER NO-FAULT BILLS WHOSE OCCUPATIONS WERE LISTED AS LAWYER AND INSURANCE—10 SELECTED STATES, 1969

| State               | House           |         |           | Senate          |         |                |
|---------------------|-----------------|---------|-----------|-----------------|---------|----------------|
|                     | Total committee | Lawyers | Insurance | Total committee | Lawyers | Insurance      |
| California.....     | 14              | 17      | 1         | 9               | 14      | 0 <sup>1</sup> |
| Florida.....        | 13              | 12      | 1         | 7               | 12      | 1              |
| Illinois.....       | 17              | 8       | 4         | <sup>2</sup> 12 | 16      | 3              |
| Michigan.....       | 11              | 12      | 1         | 5               | 11      | 0              |
| Missouri.....       | 17              | 18      | 6         | 8               | 15      | 1              |
| New Jersey.....     | 7               | 12      | 1         | 5               | 15      | 0              |
| New York.....       | 18              | 110     | 5         | 18              | 14      | 1              |
| North Carolina..... | 21              | 11      | 3         | 14              | 17      | 1              |
| Pennsylvania.....   | 23              | 19      | 8         | 14              | 1       | 14             |
| Texas.....          | 21              | 9       | 7         | 17              | 13      | 0              |

<sup>1</sup> Includes chairman.

<sup>2</sup> Insurance Division, Financial Institutions Committee.

Source: State legislative handbooks and manuals.

TABLE 2.—MEMBERS OF 10 SELECTED STATE LEGISLATURES WHOSE OCCUPATIONS WERE LISTED AS LAWYER AND INSURANCE—1969

| State               | House      |         |           | Senate     |         |                |
|---------------------|------------|---------|-----------|------------|---------|----------------|
|                     | Total body | Lawyers | Insurance | Total body | Lawyers | Insurance      |
| California.....     | 80         | 19      | 5         | 40         | 20      | 2              |
| Florida.....        | 119        | 42      | 17        | 48         | 22      | 9              |
| Illinois.....       | 177        | 55      | 25        | 58         | 19      | 11             |
| Michigan.....       | 110        | 19      | 3         | 38         | 8       | 2              |
| Missouri.....       | 163        | 33      | 18        | 35         | 22      | 1              |
| New Jersey.....     | 80         | 29      | 6         | 40         | 25      | 1              |
| New York.....       | 150        | 85      | 10        | 57         | 42      | 2              |
| North Carolina..... | 120        | 44      | 6         | 50         | 21      | 3              |
| Pennsylvania.....   | 203        | 58      | 23        | 50         | 15      | 6              |
| Texas.....          | 150        | 56      | 14        | 31         | 20      | 0 <sup>1</sup> |

Source: State legislative handbooks and manuals.

THE OCCUPATIONAL CHARACTERISTICS OF SENATE AND HOUSE MEMBERS OF TEN  
STATE LEGISLATIVE COMMITTEES ON INSURANCE, 1971

CALIFORNIA

*Senate Insurance and Financial Institutions Committee*

Bradley (Ch.)—attorney.  
Collier—title business.  
Harmer—attorney.  
Short—attorney.  
Walsh—businessman.  
Carpenter—attorney.  
Stevens—attorney.  
Wedworth—businessman.  
Zenovich—attorney.

*Assembly Finance and Insurance Committee*

Fenton (Ch.)—attorney.  
Briggs—insurance broker.  
Brathwaite—attorney.  
Beverly—attorney.  
Foran—attorney.  
Knox—attorney.  
Lewis—life underwriter.  
Moorhead—attorney.  
Priolo—retailer.  
Pierson—attorney.  
Campbell—schoolteacher.  
Ddeh—teacher.  
Hayden—full-time legislator.  
Kardibian—attorney.  
Murphy—attorney.  
Powers—attorney.  
Ralph—full-time legislator.  
Townsend—full-time legislator.  
Waxman—attorney.  
Registered motor vehicles in 1969—11,601,000.

TEXAS

*Senate Insurance Committee*

Blanchard (Ch.)—attorney.  
Aiken—attorney.  
Brooks—newspaperman.  
Connally—rancher, real estate.  
Creighton—attorney.  
Harris—attorney.  
Mauzy—attorney (trial lawyer).  
Moore—attorney.  
Watson—attorney.  
Word—attorney.  
Bates—lawyer.  
Beckworth—attorney.  
Herring—attorney.  
Kennard—real estate.  
Wallace—attorney (trial lawyer).

*House Insurance Committee*

Pickens (Ch.)—attorney (insurance).  
Salter—attorney.  
Bynum—Director of Operations, N. Texas Enterprises.  
Allred—newspaperman.



Beckham—general insurance.  
 Cavness—insurance and real estate.  
 Harris—attorney.  
 Hilliard—insurance salesman.  
 Kost—financial and management consultant.  
 Finney—attorney.  
 Heatley—attorney, rancher, farmer.  
 Holmes—insurance and real estate.  
 Jones—insurance.  
 Jungmichel—insurance.  
 Nabers—attorney.  
 McKissack—Executive Vice-President of a business.  
 Niland—attorney.  
 Orr—insurance and banking.  
 Parker—attorney.  
 Truan—life insurance agent.  
 Wolff—attorney and Vice-President Bld. Supplies Co.  
 Registered motor vehicles in 1969—6,506,000.

## NEW YORK

*Senate Insurance Committee*

Bernard Gordon (Ch.)—lawyer and Assist. Dir., County Trust Co.  
 John Hughes—attorney and bank trustee.  
 John Marchi—attorney.  
 Thomas Laverne—attorney (M-H. insurance).  
 W. T. Smith—farmer, restaurant owner.  
 James H. Donovan—contractor.  
 Thomas McGowan—lawyer.  
 Smith, B. C.—lawyer.  
 Douglas Hudson—farmer.  
 Ralph Marino—lawyer.  
 Richard E. Schermerhorn—insurance agent.  
 Paul Bookson—lawyer.  
 Seymour Thaler—lawyer.  
 Manfred Ohrenstein—lawyer.  
 Garcia—insurance.  
 Abraham Bernstein—lawyer.  
 Harrison Goldin—lawyer.

*Assembly Insurance Committee*

Alfred Lerner (Ch.)—attorney.  
 Lucio Russo—attorney.  
 Warder—tent manufacturer.  
 Joseph Pisani—attorney.  
 Joseph Reilly—stockbroker.  
 John T. Buckley—attorney.  
 Beckhan—insurance (senior vice president of Chatauqua General Group).  
 Leonard Silverman—attorney.  
 Brewer—journalist.  
 Joseph Calabrette—attorney.  
 Gordon W. Burrows—attorney.  
 Healey—not given.  
 Hogan—manager of services.  
 Grieco—real estate and insurance broker.  
 Emanuel R. Gold—attorney.  
 Miller, H. J.—general insurance agent.  
 Beatty—professor at N.Y.U.  
 Registered motor vehicles in 1969—6,505,000.

## OHIO

*Senate Agriculture, Insurance and Financial Institutions*

Guyer (Ch.)—Public Relations Director.  
 Rob. J. Cortis—attorney Elyria.  
 James K. Leedy—attorney Woosk.  
 Lukens—management consultant.

Taft—attorney (insurance).  
 Kilpatrick—Tax Consultant.  
 Novak—public accountant.  
 O'Shaughnessy—funeral director.

*House Insurance, Public Utilities, and Financial Institutions*

Netzley (Ch.)—petroleum wholesaler.  
 Mayfield—insurance.  
 Batchelder—attorney (insurance).  
 Don R. Fraser—attorney Toledo.  
 Heintzelman—engineer.  
 Hughes, R.—businessman.  
 Ray C. Luther—attorney Newark.  
 Paulo—public relations.  
 Rich G. Reichel—attorney (trial).  
 Gordon M. Scherer—attorney—con.  
 Rob. D. Schuck—attorney Fenslay.  
 Joe P. Tulley—attorney Mentor.  
 Del Bane—salesman.  
 Fries—sales marketing.  
 Hinig—public accountant.  
 Jones, C.—personnel director.  
 McCarthy—sales manager.  
 Ostrovsky—insurance.  
 Riffe—general insurance agent.  
 Tablack—accountant.  
 Thompson, J.—real estate and insurance.  
 Registered motor vehicles in 1969—5,875,000.

PENNSYLVANIA

*Senate Insurance Committee*

Hankin (Ch.)—funeral director.  
 McGinchey—pres., equipment co.  
 Arlene—businessman.  
 Donolow—attorney.  
 Gerhart—public relations.  
 Mellow—accountant and college lecturer.  
 Noszka—full-time state senator.  
 Rovner—attorney.  
 Holl—business executive.  
 Manbeck—farmer.  
 Wade—insurance (former manager, board chairman of bank and trust co.).  
 Lentz—real estate broker.  
 Dengler—teacher.  
 McCreesh—real estate and appraiser.  
 Mazzei—alderman (director of savings and loan assoc.).  
 Murray (ex. officio)—insurance—Pres. Pro Temp.

*House Consumer Protection Committee*

Gelfand (Ch.)—attorney.  
 Schmitt—real estate and insurance broker.  
 Brunner—attorney.  
 Taylor—owner and operator of realty-insurance co.  
 McGraw—insurance.  
 Geesey—insurance.  
 Hamilton—insurance broker.  
 Renninger—lawyer.  
 Barber—businessman.  
 Early—consultant.  
 Kelly—full time legislator.  
 Kolter—accountant.  
 Manderino—attorney.  
 Ritter—full-time legislator.  
 Rush—realtor.  
 Rybak—attorney.  
 Savitt—lawyer.  
 Beren—attorney.

Dorsey—insurance broker.  
 Fawcett—housewife.  
 Harrier—insurance broker.  
 Knepper—printing.  
 Moore—insurance broker.

Registered motor vehicles in 1969—5,760,000.

## ILLINOIS

*Senate Financial Institutions Committee*

McCarthy (Ch.)—lawyer (pltf).  
 Sabickas—full-time legislator.  
 Kusibab—insurance.  
 Lyons—not given (insurance).  
 Chew—businessman.  
 Palmen—attorney.  
 Hall—full-time legislator.  
 Swinarski—Assist. Clerk, Cook County Circuit Court.  
 Romano—insurance broker.  
 Groen—lawyer.  
 Harris—insurance.  
 Ozinga—banker and attorney.  
 Sours—attorney.  
 Merritt—insurance, real estate, and farm loans.

*House Insurance Committee*

Miller (Ch.)—superintendent of Cook County Forest Preserve.  
 Cunningham, R.D.—insurance and real estate.  
 Epton—lawyer (defense).  
 North—taxicabs and rental cars.  
 Thompson, J. W.—lawyer (defense).  
 Collins, O.G.—real estate and insurance.  
 Fary—real estate and insurance.  
 Merlo—Chicago Park District.  
 Duff—lawyer.  
 Gibbs—lawyer (trial).  
 Brummet—not given.  
 Krause—insurance and real estate.  
 Laurino—not given.  
 Thompson, R.L.—insurance broker.  
 Registered motor vehicles in 1969—4,487,000.

## MICHIGAN

*Senate Commerce Committee*

Lodge (Ch.)—attorney (trial).  
 Bouwsma—labor mediator.  
 Novak—labor representative.  
 Pittenger—not given.  
 McCullough—teacher and attorney.

*House Insurance Committee*

Edwards—corporate officer.  
 Ogonowski—full-time legislator.  
 Anderson—sales representative.  
 Baker—pharmacist.  
 Heinze—attorney and insurance executive.  
 McNeely—full time legislator.  
 Clark—attorney.  
 Hood—full-time legislator.  
 Kelsey—full-time legislator.  
 Hayward—full-time legislator.  
 Engler—full-time legislator.  
 Registered motor vehicles in 1969—4,488,000.

## FLORIDA

*Select Senate Committee on Life, Accident and Health Insurance of the Commerce Committee*

Karl (Ch.)—attorney (trial).  
 Brantley—sheet metal contractor.  
 Poston—pres., contracting co.  
 Henderson—professional numismatist and investor.  
 Barrow—lawyer, farmer, grocery business (trial).  
 Harverfield—attorney.  
 Gong—attorney.  
 Weber—realtor.  
 Lewis—lawyer.  
 Johnson—lawyer.

*House Insurance Committee*

Gillespie (Ch.)—attorney.  
 Craig—mortician.  
 Featherstone—attorney.  
 Hartnett—mortgage banker and real estate.  
 MacKay—attorney (insurance).  
 Miers—dentist (banking and real estate).  
 Birchfield—attorney.  
 Cherry—attorney.  
 Hess—outdoor recreation business.  
 Kennelly—storage and moving business.  
 Tittle—attorney.  
 McDonald—insurance agent.  
 Sims—realtor.  
 Sykes—airline pilot.  
 Whitson—attorney.  
 Williamson—attorney.  
 Registered motor vehicles in 1969—3,895,000.

## NEW JERSEY

*Senate Insurance Committee*

White—lawyer (Bd. of Directors of building and loan association and real estate mutual loan association).  
 Matturi—lawyer.  
 Italiano—lawyer (city commissioner and municipal judge).  
 Lynch—lawyer.  
 Beadleston—retired.

*Assembly Insurance Committee*

Kaltenbacher—lawyer and business.  
 Volk—insurance broker and vice president of insurance agency.  
 White—banking and director of savings and loan association.  
 Crane—engineer.  
 Lordi—lawyer.  
 Hollenbeck—attorney.  
 Esposito—president of hardware and central supply company.  
 Evers—lawyer.  
 Registered motor vehicles in 1969—3,490,000.

## INDIANA

*Senate Insurance and Incorporations Committee*

McComb—insurance agent.  
 McCormack—insurance agent.  
 Barber—real estate.  
 Harrison—executive, foundry co.  
 Hill—insurance company executive.



Snowden—insurance agent.  
 Rogers—attorney.  
 Konrady—oilman.  
 Stanley—lawyer.

#### *House Insurance Committee*

LaPar (Ch.)—M.D.  
 Foreman—life insurance agent.  
 Burrous—farmer.  
 Guy—attorney.  
 Hayes—insurance agent.  
 Lamkin—M.D.  
 Peterson—insurance and farming.  
 Robinson—attorney (trial).  
 Yarnell—sporting goods store.  
 Zaleski—real estate.  
 Dobis—beverage salesman.  
 Kennedy—insurance and real estate.  
 Kesler—attorney (trial).  
 Phillips—insurance and farming.  
 Rainbolt—real estate and insurance.  
 Registered motor vehicles in 1969—2,975,000.

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[From Chicago Today, Thursday, Apr. 15, 1971]

#### NO-FAULT CAR INSURANCE HAS FAULTS

(By Jack Mabley)

If you don't own a car and there is none in your family, you can sit back and laugh at the ballooning expenses of car owners.

But if you are tied to auto cost one way or another, your troubles are getting worse.

The Illinois Insurance Department two weeks ago proposed what is called a "limited" no-fault automobile insurance system. On paper it looks great. Insurance Director James Baylor said it probably would reduce the cost of auto insurance.

No-fault auto insurance works the way fire insurance works. If there is an accident [fire], the insurance company pays for your loss, regardless of the cause, or fault.

It would save motorists money because more than half of the billions in premiums paid by motorists goes to lawyers, adjusters, agents and insurance companies. Less than half of the consumer's premium winds up with the accident victim.

The no-fault system is the brainchild of Prof. Jeffrey O'Connell of the University of Illinois Law School and Harvard law professor Robert E. Keeton. They proposed it in 1965 [and we reported it then] and because it is an idea whose time has come, it is gradually being adopted around the country.

But O'Connell has taken a good look at the Illinois proposal, and shaken his head in dismay. "In essence, the governor proposes to add on no-fault insurance to the present fault system, thereby preserving much of the waste and inefficiency and corruption of the fault system," says O'Connell.

The Illinois proposal provides for some no-fault benefits, but retains the right of everybody to sue under a fault claim.

"Gov. Ogilvie's bill is closely fashioned after bills recently proposed by the National Association of Independent Insurers and the American Mutual Insurance Alliance—two of the principal trade organizations that write over half of all auto insurance in the United States, and which have long been bitterly opposed to no-fault insurance," stated O'Connell.

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\*The ten largest states, in terms of motor vehicle registration, were selected for study. See *Statistical Abstract of the United States*, 1970, p. 545.

"If those segments of the insurance industry succeed in selling their plan or variations of it to the public, they will have succeeded in putting over a system they like best—a system whereby they get to sell everyone two policies covering every accident instead of one: one policy for fault insurance, and the other for no-fault insurance.

"No wonder those segments of the industry back the governor's proposal," O'Connell said.

The plan has been put up to the legislature. Over in Champaign they have the man who wrote the book. He must be called to testify on the bill. Then the legislators can listen to Baylor, and decide who's right.

Maybe you can escape auto costs by shunning autos, but I don't know any way you can duck medical costs unless you are willing to risk financial catastrophe by going without insurance.

There is an unbelievable situation existing in hospitals since the Illinois Supreme Court decision in September that hospitals may be sued if a patient gets hepatitis thru a blood transfusion.

Any hospital or doctor giving a transfusion today faces the chance of being sued if the blood is contaminated. There is no fool-proof way to screen blood or donors.

The alternative is not to give the transfusion, in which case the patient may die, and the doctor and hospital may be sued for malpractice.

The real horror of this is the reality that from a dollars and cents standpoint it is better not to give the transfusion because damage awards in deaths are much lower than damage awards given to patients who survive.

Fortunately, a bill has passed the Illinois House, and is pending in the Senate Judiciary Committee, relieving hospitals and doctors of liability for hepatitis transmitted thru blood transfusions.

If this bill doesn't become law, liability insurance for hospitals will go sky high. It could cost a patient as much as \$15 a day per room.

A hospital with which I am familiar paid \$2,500 for liability insurance eight years ago. This year the cost is \$37,000, and that doesn't even reflect the hepatitis problem.

And to frost this whole cake, it might interest you to know that lawyers for hospitals and drug firms are worried that if the no-fault insurance plan becomes law, the personal injury lawyers who have made fortunes in accident cases are going to turn to new fields to conquer—and there sits the health care industry, ripe for plucking.

#### CRITIQUE BY PROFESSOR JEFFREY O'CONNELL OF THE ILLINOIS AUTO REPARATIONS PLAN

Governor Ogilvie's proposal for reform of auto insurance is an acute disappointment to those who have labored long for reform in this area.

In essence, the Governor proposes to add on no-fault insurance to the present fault system, thereby preserving much of the waste and inefficiency and corruption of the fault system: and yet it is the inadequacies of the fault system which lead to the need for no-fault insurance in the first place. In other words, while the Governor's plan provides for some no-fault benefits, it retains the right of everyone to still sue under a fault claim. So all of us will now need two auto insurance policies covering the same range of loss: one for no-fault claims *by* us, and a second for fault claims *against* us. Says the Governor's report, announcing his proposal, "Even though the plan provides prompt payment [by no-fault insurance] of most of the economic losses which the injured victims suffer, they are not prevented from making a claim against the wrongdoer, or his insurance company, for other damages or losses they may have incurred as a result of the accident, including pain and suffering."

The folly of the kind of reform proposed by Governor Ogilvie can best be illustrated this way: Today under auto insurance, I am called on by law to insure myself for paying your losses if I am at fault, and you are called on by law to insure yourself for paying my losses if you are at fault. But 'who is at fault' is so unpredictable that for years insurance companies have offered the option of some no-fault coverages whereby I can insure payment to myself and my family regardless of fault, and you can likewise insure yourself and your family regardless of fault. But these supplemental no-fault coverages (payable only for car damage and limited medical expenses) in no way diminish the need for—or payment under—fault insurance payable to the occupants of the other car.

And now, Governor Ogilvie is advocating as a solution to the ills of auto insurance more required supplemental no-fault insurance. But since I must thereby insure myself and you must thereby insure yourself, each regardless of fault, why do we also need liability insurance based on fault as the Governor proposes? Especially is the question pertinent when fault insurance is so wasteful, paying much more for lawyers and insurance overhead than in benefits to you and me. *In other words, since you cover yourself for your loss regardless of who was at fault, and I cover myself for my loss regardless of who was at fault, why do we need to sue each other over who was at fault? Who benefits from all those suits over who was at fault except lawyers and insurance companies?*

What truly meaningful reform entails, then, is going much further with no-fault coverage by amending the law so that it no longer calls for me to insure you and you to insure me under an unworkable [fault] coverage. Rather each of us will insure himself under a workable [no-fault] coverage, with each of us then being in a position to *forget* about claims based on fault.

Even the recent Massachusetts no-fault law—which is a *very* limited and inadequate no-fault law—goes much further in crucial respects than Governor Ogilvie's proposal. At least the Massachusetts law eliminates *all* fault claims where medical loss does not exceed \$500. But the danger of even the Massachusetts bill is that the fault claims are preserved in so many cases that there is a danger that sooner or later they will increase to the point where we will approach that dangerous situation of having both fault and no-fault claims applicable to the great mass of smaller and medium size claims, with the corresponding risks of corruption and skyrocketing costs.

After all, at today's medical costs, by putting a person in a hospital for a few days and running a battery of tests, the \$500 Massachusetts ceiling before fault claims can be brought can readily be breached. Given the long history of lawyers, doctors and victims exaggerating traffic claims for their profit, such a plan offers thin protection against the evils of the present fault system.

But Governor Ogilvie's proposal is much worse than the weak Massachusetts law. The bill calls for substantial no-fault payments up to around \$2000 for medical bills, for example, and for wage loss, but would also follow fault claims still to be brought within the same range of coverage in every case. Damages for pain and suffering in such fault claims would be limited to one-half of the amount of medical bills if those bills were less than \$500 and to an amount equal to the medical bills if they were over \$500. In cases of very serious injury (death, permanent disability, etc.), there would be no limit on payments for pain and suffering. In all cases, any no-fault auto insurance payments would be allowed to duplicate most payments made from other no-fault coverages, such as Blue Cross or sick leave.

There are at least two fatal flaws in such a proposal. Note that in *every* case, fault claims are preserved, retaining the possibility of lawyers and adjusters fighting over who is at fault in every accident. Secondly, there is still the temptation in every case to pad on medical bills, to duplicate payment already made from Blue Cross and sick leave, etc., and to increase payment for pain and suffering. So the nuisance value and waste of small claims—the cancer of the present system are retained, albeit with the jackpot cut down somewhat. What could be greater folly than to waste precious medical and insurance resources by (1) guaranteeing people that their medical bills will be paid and (2) then encouraging them to incur unnecessarily medical bills (which are guaranteed) by assuring them that for every guaranteed dollar expended for medical loss they will be paid an extra 50 cents or a dollar, supposedly for their pain and suffering. What have they to lose by padding their medical bills? Isn't this a way of coining money? Indeed it may be even worse: Under Governor Ogilvie's plan, if a person is paid \$100, say, from Blue Cross for his medical bills, he will be entitled to the \$100 all over again from his auto no-fault insurance. He is then allowed to sue the other driver to be paid \$50 for his pain and suffering, *plus* apparently \$100 more to duplicate the Blue Cross payment. (The plan is ambiguous on this last point.) But even without that last \$100 payment, the waste and duplication is shocking and scarcely much of an improvement over the present shockingly bad system. What sensible no-fault



insurance ought to do is to see to it that such medical loss is paid *once* and have that be an end of it. Under the Governor's plan, then, a person receiving no-fault benefits may still sue under a fault claim for :

- (1) his pain and suffering.
- (2) 15% of his wage loss up to a total wage of \$150 a week.
- (3) all of his wage loss above \$150 a week.
- (4) all of his losses already covered by, say, Blue Cross or sick leave.
- (5) his property damage.

Won't that inevitably mean many fault claims on top of no-fault claims?

Governor Ogilvie's bill is closely fashioned after bills recently proposed by the National Association of Independent Insurers and the American Mutual Insurance Alliance—two of the principal trade organizations of insurance companies representing companies that write well over half of all auto insurance within the United States and which have long been bitterly opposed to no-fault insurance. If those segments of the insurance industry succeed in selling their plan or variations of it to the public, they will have succeeded in putting over a system they like best—a system, as suggested earlier, whereby they get to sell everyone two policies covering every accident instead of one: one policy for fault insurance and the other one for no-fault insurance. No wonder these segments of the industry are backing the Governor's proposal.

It is significant that this business of having *both* fault and no-fault claims applicable to every accident, large or small, directly contravenes the standards for no-fault insurance proposed recently by the Nixon Administration through the U.S. Department of Transportation. Once substantial no-fault insurance is instituted, said the Department of Transportation, "no person should recover for [pain and suffering] . . . unless he established that he suffered permanent [injury] . . . or that he incurred personal medical expenses . . . in excess of a *rather high* dollar threshold [emphasis supplied]." Governor Ogilvie's bill has no threshold at all, not *even* the overly modest one included in the Massachusetts law. On the other hand, the no-fault bills proposed, for example, by U.S. Senator Philip Hart (D. Mich.) and Professor Robert E. Keeton of the Harvard Law School and myself, as well as the criteria set forth by the U.S. Department of Transportation, all entail real *substitution* of expeditious no-fault insurance for cumbersome fault insurance, not adding no-fault insurance onto fault insurance and thereby retaining so many of the evils of the fault system.

In recommending his proposal to Governor Ogilvie, Illinois Insurance Director James Baylor said, "I emphasize that what we propose will not make any radical departure from the traditional American Judicial system [applicable to auto accidents]. Rather does it call for a supplement to it." But the legal system applicable to smaller and medium size auto accidents has long been a disaster. We should not *supplement* it: we should *replace* it.

A no-fault bill accomplishing what Governor Ogilvie's bill does not—and covering property damage as well—is being introduced before the General Assembly by Representative Anthony Scariano (D. Park Forest).

Mr. Moss. Thank you.

Mr. Broyhill?

Mr. BROYHILL. No questions. I just want to welcome Representative Scariano.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. No questions.

Mr. Moss. I think you have given us a very fine statement. I thank you for coming here.

Mr. SCARIANO. Thank you very much. I enjoyed so much being before this committee.

Mr. Moss. The next witnesses are Dr. Colston Warne, president of Consumers Union, and Mr. Robert Klein, economics editor, Consumers Union.

Gentlemen, do you have a prepared statement?



**STATEMENT OF DR. COLSTON E. WARNE, PRESIDENT, CONSUMERS UNION OF THE UNITED STATES; ACCOMPANIED BY ROBERT KLEIN, ECONOMICS EDITOR**

Mr. WARNE. Yes, we have sent 50 copies down.

Mr. MOSS. Gentlemen, we now have the copies, and you may proceed.

Dr. WARNE. Mr. Chairman, members of the committee, Consumers Union is pleased to respond to the invitation to appear at this hearing and to testify in favor of reform of the Nation's automobile insurance system. My name is Colston E. Warne. I am president of the Board of Directors of Consumers Union and have served in that capacity since the founding of the organization in 1936. Consumers Union is a non-profit membership organization chartered under the laws of the State of New York to provide information and counsel to consumers about goods and services and about the management of family expenditures. The financial support of the organization comes mainly from the 2 million subscribers and newsstand buyers of our monthly magazine, Consumer Reports. Consumer Reports and our other publications carry no advertising. Consumers Union accepts no support from any commercial organization.

An undercurrent of public discontent with automobile insurance became evident as early as 1961, when Consumers Union began its first comprehensive study of this consumer service. The next year, 1962, we published a series of reports. They told how to buy insurance, which of the larger companies appeared likely to give the best service, and what seemed fundamentally wrong with the kind of insurance consumers were forced to buy.

In 1967 we cosponsored a conference on automobile insurance claims at the University of Illinois Law School. In 1968 we endorsed the Keeton-O'Connell basic protection plan, the pioneering no-fault plan. In 1970 we published the results of a survey of the experiences with automobile insurance of some 230,000 of our members. Again the findings led us to advocate no-fault insurance. Later in the year we cosponsored another conference on insurance reform, this one in collaboration with the University of Minnesota.

The report of that University of Minnesota conference on automobile insurance reform of 1970 is just available and, if the committee desires it, I should be pleased to give you this copy.

Mr. MOSS. The committee would very much like to have the copy for its records.

(The report entitled "Fault or No-Fault?" may be found in the committee files.)

Dr. WARNE. As for myself, I was privileged to serve as Chairman of the Consumer Advisory Committee of the Department of Transportation's auto insurance and compensation study. As a result of this decade of exposure to the problems of automobile insurance, perhaps we can speak about them with some authority from the consumer's point of view.

I am happy to be joined here by our economics editor Robert Klein, who has incorporated some 14 goals which should be met by a plan in this field and has compared the bills that are pending with these desirable goals. The situation today, we feel, has become absurd.

Consumers find themselves ordered or compelled as carowners to buy automobile liability insurance from private companies, yet those companies refuse to sell insurance to many of us. According to the DOT studies, 14 percent of American motorists have had their insurance canceled. And that figure is no doubt obsolete. Consumers Union has lately been flooded with complaints from people whose auto insurance companies have canceled or refused to renew their policies. In the past year some of the most prestigious insurers, including Nationwide Mutual, Liberty Mutual and State Farm Mutual, have mercilessly reviewed their underwriting standards and, as a result, have rejected many thousands seeking to buy policies. Many people tell us they are being canceled by companies they have done business with for 10 or 20 years.

It was intolerable that, in earlier years, insurance companies were found to be "red lining" poor urban areas, abandoning primarily the low-income, minority-group customer. Now this shedding of risks has made itself felt across the demographic board. Large numbers of middle-class, suburban, white motorists—Middle America, if you like—have been denied coverage in the regular market and have been relegated to assigned-risk pools. If politicians haven't read the handwriting on the wall, insurance agents surely have. Richard E. Peck, president of the Independent Mutual Agents of Connecticut, warned his fellow agents in March, "I think all hell is about to break loose." According to the National Underwriter, he told an agents' meeting:

We—and the public—need better statutes to guard against policy cancellations and agency terminations. We'd better get them, or public wrath such as we've never known is going to be unleashed against us. We're going to hear about no-fault automobile insurance until we hear it in our sleep. We'd better be ready to either propose or back the best course of action . . . because if we don't somebody is going to shove something down our throats that we don't like the taste of at all.

Mr. Peck is absolutely right.

In the April 1971 issue of *Consumer Reports* we have described 14 goals for automobile insurance reform. You will find them in our exhibit A, which I should like to submit for the record. In this exhibit we compare the various reform plans with the goals which we have enunciated.

Mr. Moss. Is there objection to the request? Hearing none, the material will be included in the record following the statement. (See p. 208.)

Dr. WARNE. We advocate a thorough going Federal no-fault system. One of our goals is a noncancellable, guaranteed-renewable automobile insurance policy—a policy that everyone in the insurance business must sell to all comers, so long as they are licensed to drive or eligible to register a car and so long as they pay the premiums. It is not the responsibility of the insurance companies to decide who shall and who shall not drive. That should be the responsibility of the State.

Does it sound outlandish and impractical to require insurers to sell policies to all eligible customers? Then consider the law in the Federal Republic of Germany, as described in the DOT's report, "Comparative Studies in Automobile Accident Compensation."

Automotive insurers [in West Germany] are under a statutory obligation to accept applications for liability insurance, and the regulatory authorities see to it that insurers comply with that duty. While an application may be rejected for certain limited reasons, there is no danger that an applicant who is ready

to pay the applicable premium will be lawfully rejected by each of the more than 100 insurers writing automobile insurance in Germany. This system not only eliminates the need for any supplementary facility like the American "Assigned Risk Plans," it also prevents excessive "skimming." All companies get about equal shares of desirable and undesirable risks.

As you will note in our exhibit, only one major automobile insurance reform plan would require insurance companies to deal with everyone. It is the Hart-Magnuson plan, H.R. 14494, now before this committee for consideration. Unfortunately, the concurrent resolution proposed by the Department of Transportation does not recommend this reform. In our opinion, failure to deal directly with the problem of making insurance fully accessible to every motorist is a major shortcoming of the administration's proposal.

Some will say that a first-party, no-fault automobile insurance policy of the kind being proposed would automatically solve the cancellation problem. That assertion flies in the face of recent experience. Try to buy burglary insurance in Manhattan. Try to buy flood insurance in Mobile. CU's mail also hints at the beginning of a wave of cancellations of homeowner's insurance policies. All these are first-party coverages.

The fact is, insurance companies have drifted away from the very foundations on which insurance is built—the broadest possible spreading of the risk. One man who worries about this trend is George K. Bernstein, Federal Insurance Administrator. As he said to the Association of the Bar of the City of New York last month:

Perhaps the most basic principle of insurance—upon which it grew, but which in recent years has been in large measure abandoned—is the need to spread the risk. Effectively implemented, the principle of insurance requires the placement of a large number of risks in a single category in order for classification and territorial rate-making to produce sound results. Industry survival is unlikely if it continues to pursue an abortive law of small numbers. . . . In the fire and extended coverage area, this form of enforced isolation has contributed to the segregation, in some areas, of over one-third of the insureds in [assigned risk pools].

No-fault insurance, while not by itself the answer to the cancellation problem, is certainly the answer to the scandalous social problem of the uncompensated or undercompensated accident victim. You have all read the hardship statistics in the DOT studies: 45 percent of seriously injured victims receive no compensation from automobile liability insurance. Of injured people who do receive liability insurance benefits, those whose losses are less than \$500 collect an average of four times their losses. On the other hand, people with more than \$25,000 of out-of-pocket medical expenses and lost wages average less than 15 percent recovery. When serious injury occurs, 5 percent of the stricken households have to send other members of the family to work; 3 percent have to move to cheaper housing; 20 percent have to take money from savings or the sale of property; 12 percent miss debt payments.

To put some flesh and blood on those figures, we would like to tell you of an actual case of uncompensated loss and its consequences. We cannot disclose the victim's name because his claim may soon be in litigation, but his plight illustrates that of thousands of highway victims every year.

The man, whom we shall call Mr. Johnson, operated a diner in a small town. A few years ago he needed an operation on his knee. It was going to keep him off his feet for a prolonged period, and so he tem-



porarily leased his diner. A couple of years after the operation, Mr. Johnson's doctor said he would soon be able to put aside his crutches and resume his livelihood. Then came the accident. A youthful driver, who Mr. Johnson claims was driving in the wrong lane, hit his car head-on. His knee hit the dashboard. The next day the surgeon gave him the bad news. The accident had totally undone the operation, and Mr. Johnson will have to a knee brace and use a crutch for the rest of his life. He will never be able to resume operation of his diner.

The youthful driver's insurance company accepted liability and paid almost \$500 to fix Mr. Johnson's car. In compensation for his medical expenses and lost income, Mr. Johnson was offered \$1,000. Furthermore, the adjuster warned him, a witness had been located who would testify that he was not driving entirely in his own lane when the accident occurred. Mr. Johnson has hired a lawyer and will soon take up the tortuous course of pressing suit. At most he can hope to win only \$10,000, the maximum liability coverage in the youthful driver's assigned risk policy. If he is lucky enough to collect \$10,000, he can expect to pay out at least \$3,000 to his lawyer for legal fees and court costs.

Mr. Johnson's loss will be far greater than \$7,000. Medical bills thus far are \$472. Lost earnings—money he would have earned, after taxes, behind the counter of his diner—amount to at least \$10,000 per year. Mr. Johnson is 62 years old now, and he had planned to keep working until he was 70. But even if he is retired at 65, his wage loss would reach \$30,000.

The Johnsons can ill afford their loss. Already, they find it impossible to continue paying their daughter's college tuition. She has gone into debt to stay in school. The Johnsons are living on social security disability income and the money they had been saving for retirement. That money, they told us, is dwindling rapidly. The future of Mr. and Mrs. Johnson looks bleak indeed.

Under a no-fault system such as the Rockefeller-Stewart plan, the American Insurance plan, the Hart-Magnuson plan or the DOT plan, the Johnsons would have been able to weather this crisis without financial hardship. There are millions like them.

Of the many important details of the reform plans before this committee, we will dwell on only a few others today.

The first is the question of whether, in a no-fault system automobile insurance coverage should take precedence over other insurance that might cover the same loss. We fully agree with the objective of coordinating benefits to eliminate duplicate coverage. Many people, for example, are insured through their employers for some portion of their hospital and doctor bills and, in some instances, for major medical expenses. Their insurance is written in group plans, and, in the case of Blue Cross-Blue Shield and some other plans, is produced on a nonprofit basis. Of \$1 paid into Blue Cross, better than 95 cents is returned in benefits. Of \$1 paid into commercial group health and accident plans, more than 80 cents is returned in benefits.

The percentage of premium returned as benefits is the chief measure of efficiency of an insurance plan. How does automobile insurance stack up? The liability insurance which so many of us want to be rid of is grossly inefficient. According to the DOT, it returns only 50 cents on the dollar. According to other studies, it returns less than 45 cents



on the dollar. Furthermore, most of that 45 cents does not pay for uncompensated economic losses. It pays instead for losses already covered by other insurance and for unmeasurable losses under the catchall heading of pain and suffering. Hence, we'll be well rid of liability insurance.

But what of the efficiency of other kinds of automobile insurance? What of the first-party coverages for collision damage, fire, theft, and medical payments? How efficient are they? Far less so than Blue Cross and commercial group coverages. First-party car insurance returns only about 65 or 70 cents on the premium dollar.

Keep in mind that consumers will be required to buy no-fault coverage under all the plans being studied. We have no quarrel with that. But we do quarrel with a system that would make us buy relatively inefficient and therefore relatively high-priced automobile-medical coverage in place of our present lower priced group coverages. That, we regret to say, is what the DOT plan would do by its insistence on making automobile insurance the primary coverage for injury and wage loss.

It is true that the DOT plan gestures toward inviting the group hospital and medical plans to compete as automobile-injury insurers. But we fear that, with Blue Cross rate increases meeting heightened public resistance, some Blue plans might welcome the chance to provide the illusion of rate stability by shedding coverage of auto accident victims.

Consumers Union's goal calls for auto insurance to cover only what less costly insurance plans do not cover. In a compulsory insurance situation, that is the only fair way. If auto insurers can develop highly efficient, price-competitive group coverages, fine. If not, they should cover only the excess losses.

Even in the best of markets, one of the consumer's worst problems with buying insurance is the hopelessly complex matter of getting good value for his money. There is as yet no practical way of comparing prices of life insurance policies, with their relatively similar coverages. With automobile insurance, the problem is manifestly worse. The insurance companies have fragmented the population into so many different price-rating categories that, as the Federal Insurance Administrator has pointed out, there are more than 7 million potential slots into which an insured person might fall. Imagine—7 million different prices for the same product.

That is why Senators Hart and Magnuson have included in their legislation two crucial reforms to help consumers with their insurance shopping. Auto insurance ratemaking would be put on a standard basis so that discounts for low-risk drivers would be set at uniform percentages of the basic premium. The companies could compete in price on this basic rate, but no company could rig its prices to attract only the low-risk customer by pricing itself out of the high-risk market. More important, consumers could easily shop and compare rates, thereby promoting greater efficiency in the open market tradition.

There is one serious problem with this sort of price competition. Some insurance companies might choose to compete by lowering the quality of their service—primarily by attempting to cut down on claims payments. Consumers Union's own recent survey of its members' auto insurance claims experiences indicated a significant difference in

claims handling by 25 of largest insurers. Among respondents to our questionnaire who had collected on first-party auto insurance claims for collision, fire, theft, medical payments and such, only 7 percent said they had been paid too little money. But the record was not by any means the same for every company. One company underpaid 11 percent of its claimants in our survey, while another company underpaid only 3 percent. Our statistical analysis indicated the difference between a 3 percent and an 11 percent level of satisfaction with claims payments was a highly significant difference.

One good way to prevent insurers from degrading their service would be to subject all companies to a continuous survey of the kind we conducted. The Hart-Magnuson legislation would mandate a continuing survey by the Government, with the results made available to the consuming public. The DOT plan, on the other hand, would leave consumers in the dark about both price and quality.

Despite the timidity and shortcomings of the DOT plan, Consumers Union believes the plan worthy of consumers' support at the State level. There is something to be said for using the States as laboratories for experimentation with innovations in auto insurance. But acceptable legislation in the States will run head on into the opposition of lawyers. As the DOT study found out, a significant percentage of lawyers make most of their living from personal injury clients. No-fault insurance would take away that living. Even a modicum of no-fault coverage, as in Massachusetts, threatens to eliminate the personal-injury lawyer's clientele. In its first two months of operation, the Massachusetts system saw injury claims drop by 50 percent, when everyone thought they would rise. No one as yet knows the explanation, but State Insurance Commissioner C. Eugene Farnam told us last month that the drop was probably due in large part to the discouragement of spurious claims.

Unfortunately for the chances of auto insurance reform, State legislatures tend to be dominated by lawyers. In New York State the bar association has mounted a very costly direct-mail advertising campaign against the Rockefeller-Stewart plan, which closely resembles the DOT plan. Secretary Volpe's recommendations seem to have stimulated increased efforts in the legal community to head off no-fault insurance at the legislative pass.

For political reasons and also for the sake of achieving an acceptable level of uniformity of insurance law on our interstate highways, Federal legislation is the motorist's last best hope. The Hart-Magnuson Uniform Motor Vehicle Insurance Act comes closer than any other plan now under consideration to meeting Consumers Union's 14 goals for reform. Its most serious defect, in our opinion, is that it would leave the regulation of automobile insurance rates in the hands of the States. On the record, most State insurance departments simply cannot cope with the problems of rate regulation, financial solvency and consumer complaints. Under this regime, the auto insurance industry claims it is heading for bankruptcy and is fleeing from the business. We would prefer to see the rate regulating and the fiduciary aspects of regulation transferred to the Federal Government, where competent legal, financial and actuarial skills could be most efficiently and effectively used. The whole setup could probably be financed with a tax of 50 cents a year on each motor vehicle insurance policy. Complaint handling, however, might best be left to the State insurance agencies, which are closer to the people.



The need for insurance reform is immediate. Consumers can no longer wait for States to act individually. We are faced with a crisis of uninsurability, runaway rates and uncompensated victims. Only Washington can solve the problems effectively. Consumers Union commends this committee for its inquiry. By voting out a bill with all the features of the Hart-Magnuson bill and by improving it along the lines suggested here, you will be doing a magnificent service not merely to 90 million owners of private cars but to all 200 million Americans in this motorized society.

Thank you.

(Exhibit A referred to follows:)

#### EXHIBIT A

[The following is adapted from the articles "Insurance: The Road to Reform," published in the April 1971 issue of Consumer Reports, the monthly magazine of Consumers Union.]

Automobile insurance is by now probably the most thoroughly studied of all consumer problems. The verdict of investigators from the insurance industry, government, the legal profession and consumer groups is unanimous. Something must be done to make insurance do a better job of paying the cost of highway injuries. Something must be done to stop the runaway price of insurance. Something must be done to make sure the right kind of insurance is available to every car owner, and at a fair price.

The time has come for consumers to unite in a crusade for auto-insurance reform. Everyone else is getting into the act. The three major auto-insurance industry trade groups are sponsoring plans. Even the AMERICAN Trial Lawyers Association, traditional foe of any change that might detract from the fees its members earn by representing accident victims, has drafted legislation in the name of reform. Actually, it's a last-ditch effort to patch up the present liability-insurance system.

Reform is already under way in Puerto Rico, where a government-run plan insures every accident victim for his full medical expenses and a modest amount of wages while he's disabled. Massachusetts inaugurated this year a compulsory medical and wage loss policy and eliminated most liability claims for less than \$2000 of injury expenses.

Many states are now debating reforms based on three pioneering plans: The Keeton-O'Connell Plan, The American Insurance Association Plan (developed by one group of insurance companies), and the New York State Plan. All three would de-emphasize the role played by liability insurance, and the AIA Plan would do away with it entirely. Legislation patterned on the AIA Plan has a chance of adoption this year in Minnesota.

Meanwhile, Senator Philip A. Hart has introduced in Congress a bill that would require every state to adopt a uniform kind of automobile insurance embodying principal features of the three preceding plans and some additional features contributed by the Senator himself. The Hart Plan contains much that consumers can support, although some important details remain to be worked out. Finally, on March 18, 1970, the Secretary of Transportation, speaking for the Administration, recommended insurance reforms to the states; these reforms, too, contain much that consumers can support.

There is no single, perfect plan. Some students of the problem even doubt that the system of privately sold insurance can be salvaged. They look toward government insurance. Certainly, the problem is made less critical by state-administered health-insurance and medical-care plans in those countries that have them. Then, at least, there is never a question of availability of medical care for all victims regardless of ability to pay and regardless of whether they are victims of automobile accidents, other accidents or illness.

CU believes that this country's automobile insurance should be revamped with a view to the universal health insurance that appears to be somewhere on the horizon. With that in mind, we present a 14-point set of objectives that we think are required in a reform designed in the best interests of consumers as policyholders and as claimants.

To place those objectives in an understandable framework, let's first take a look at what's gone wrong with the present system.

At issue is liability insurance and the legal doctrine that makes it necessary. The law says a motorist whose bad driving kills or injures someone or damages his property must pay for the damage. Bad driving, the law says, includes not only recklessness but also carelessness. Almost everybody makes mistakes behind the wheel, and sometimes mistakes cause accidents costing many thousands of dollars in medical bills and lost wages. Liability insurance is designed to protect the financial assets of car owners from those possibly overwhelming obligations to people they may injure. The insurance company pays what its policyholder would otherwise have to pay its victims.

Society invents laws for a purpose. One idea behind liability law is to deter people from carelessly hurting other people. Automobile insurance, though, relieves individual motorists of heavy financial penalty by spreading risk among all insured motorists. Little or no financial risk means little or no deterrent to carelessness. But the liability doctrine of deterrence wasn't very sound anyway. The instinct for survival is doubtless a far stronger incentive to safe driving.

The main social purposes of liability law is to see that innocent victims are paid their losses. Hence, every state either compels or puts heavy pressure on car owners to buy automobile insurance. One of the intolerable things about it is that the system works out unfairly. People with minor losses tend to be overpaid, while people with severe losses are likely to be underpaid. Here are some things a Department of Transportation study found out about seriously injured traffic victims who collected on liability-insurance claims:

People who suffered less than \$500 injury costs collected an average of four times their losses.

People who suffered from \$10,000 to \$25,000 injury costs collected an average of half their losses.

People who suffered more than \$25,000 injury costs collected an average of only about 15 per cent of their losses.

The study counted only the kinds of costs that took money from the victims' pockets; it made no estimate of the costs of pain and suffering. Insurance payments were measured after subtracting lawyers' fees, which cost victims an average of 25 per cent of their benefits.

Only about 45 per cent of seriously injured people in auto accidents collect any money from liability insurance. There is obviously no such right of payment for victims of one-car accidents or for those whose careless driving led to their own injury. Most state laws call for no liability payment if both drivers made mistakes. There is no auto-insurance liability payment, either, where no one is to blame for the accident or where a defective car or a defective highway is to blame. There is many a crash that embroils its victims in deadlocked argument over who was to blame.

Other kinds of insurance help to fill the gap in accident expenses left when there is no liability claim or when liability insurance underpays. But the Department of Transportation study found again that those most severely hurt are often left in financial straits. When a highway accident takes more than \$10,000 from the victim's pocket, only three victims in 10 recover more than half their losses—and that's counting payments from sick-leave plans, social security, collision coverage and so forth.

The steeply rising cost of automobile insurance makes the poor delivery of its benefits all the more deplorable. In the 10 years to 1970, Senator Hart has noted, premiums went up faster than even the soaring cost of car repairs and medical care.

Automobile liability insurance fails to put the money where it's most needed. About 56 cents of every dollar spent on liability insurance pays for insurance-company expenses and lawyers' fees. Half the remaining 44 cents pays for claims for pain and suffering, as opposed to actual out-of-pocket expenses. An additional 8 cents pays for expenses already covered by other kinds of insurance. That leaves about 14 cents to pay for medical costs and lost wages that otherwise would not be recovered by the victim.

In short, what has come to be called the fault system of auto insurance has broken down; yet law and public policy force almost all car owners to buy fault insurance from private companies. Besides misdirecting consumer expenditures, the fault system puts a heavy and costly burden on the time and facilities of the civil courts. Those who must pursue their claims in court sometimes wait as long as five years for a verdict, and the average claim takes 16 months



to settle. The delay and uncertainty of liability-insurance benefits throws part of the medical cost of auto accidents on the shoulders of the general public through higher taxes and higher hospital bills.

Worst off are the victims. The Department of Transportation study translated hardship into number. When serious injury occurs on the highway, 5 percent of the stricken households have to send other members of the family out to work; 3 percent have to move to cheaper housing; 20 percent have to take money from savings or the sale of property; 12 percent miss debt payments.

#### THE GOALS OF AUTO-INSURANCE REFORM

In CU's view, the following 14 objectives should be met by any reform plan.

1. *Medical Care*.—All people injured in car accidents should receive, at first mainly from private insurance but soon, we hope, from a Federal health plan, the expenses of complete medical care, including rehabilitation. Automobile medical-insurance benefits, like other medical insurance, should be paid to all who are hurt, regardless of who caused the accident, including drunk drivers and drugged drivers. Such people must be kept from driving. But depriving them of medical care won't keep them off the road; it will only visit hardship upon their families.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No, it limits no-fault benefits to \$10,000 per person.

American Insurance Association Plan—Yes.

New York State Plan—Yes.

Hart Plan—Yes.

DOT Plan—Not quite. It limits no-fault medical benefits to some high but not yet specified maximum amount.

2. *Wage Replacement*.—All disabled victims who cannot work should receive the equivalent of their take-home pay, their earning capacity if they are students or unemployed, or their services to their families—all such payments to be limited to an amount adequate to sustain a decent standard of living in their community. No one should receive more money than he was taking home before being injured, however. Social security pays some wage loss already to disabled persons. It should be expanded to do the full job.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No, it limits wage replacement to \$750 per month and counts that as part of the \$10,000 maximum no-fault benefits.

American Insurance Association Plan—No, it limits wage replacement to \$750 per month but does pay it indefinitely.

New York State Plan—Yes, it goes beyond the objective by paying unlimited wage losses.

Hart Plan—No, it limits wage replacement to a total of \$30,000 but does provide up to \$1,000 per month, enough for an adequate living standard at present price levels.

DOT Plan—No, it limits wage replacement to a total of \$36,000 except for victims in "approved rehabilitation programs," but does provide up to \$1,000 per month, enough for an adequate living standard at present price levels.

3. *Periodic Payment*. Auto-accident-insurance benefits should be paid to victims month by month as expenses and wage losses occur.

Do the major reform plans meet this objective? Yes although in the DOT plan it is not explicitly stated.

4. *Other Insurance*. Auto insurance should take care of paying only what less-costly insurance plans do not cover. Most plans, including social security, group hospital and medical policies, Blue Cross, and individual health policies now return a far larger percentage of the premium to the policyholders than auto insurance does.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—Partly. Though it does away with duplicate payments for the same loss, it might leave automobile insurance as the primary source of benefits, at least until there is a government health-insurance system.

American Insurance Association Plan—No. Same as Keeton-O'Connell.

New York State Plan—Yes.

Hart Plan—Yes.

DOT Plan—No. It does away with duplicate payments for the same loss unless the policyholder wants to pay extra for duplicate coverage. It make automobile insurance the primary private source of benefits, although leaving open the

door for health insurance companies to compete for the business of motorists by designing their coverage to comply with automobile insurance requirements.

5. *Group Auto Policies.*—State laws and administrative rules obstructing the sale of group automobile insurance should be overruled by Federal law. Many states have been persuaded by auto-insurance agents to hamper group sales and such mass-marketing devices as insurance for a company's employees on the payroll-deduction plan.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No. But the plan itself would encourage group selling.

American Insurance Association Plan—No. Same as Keeton-O'Connell.

New York State Plan—Yes, in that New York has no law against group insurance.

Hart Plan—Yes.

DOT Plan—No. Same as Keeton-O'Connell.

6. *Cancellation.*—Auto-insurance policies must be noncancelable, guaranteed renewable, and available in the open market to all eligible consumers. Everyone licensed to drive or able to register a car should be eligible as long as he pays the premiums. The situation now is that 14 percent of motorists have had their insurance canceled, and when one company cancels, others tend not to accept you. From 8 to 10 percent of car owners must now buy through assigned-risk plans because no company will deal with them voluntarily; yet an eight-state analysis of assigned-risk policyholders found that 53 percent of them had had no accidents or convictions for traffic violations. The price of being an assigned risk is very high—sometimes double the standard rate. In most states the most insurance you can buy as an assigned risk is the minimum liability coverage required by the state.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No.

American Insurance Association Plan—No.

New York State Plan—No.

Hart Plan—Yes.

DOT Plan—No.

7. *Pain and Suffering.*—The number of claims for pain and suffering should be greatly curtailed, leaving only the most serious ones. Most such claims today are paid to victims of minor injuries rather than to the seriously hurt. The average person with medical expenses of less than \$100 and with a lawyer to press his claim receives six times his loss. With the elimination of petty claims for pain and suffering, the insurance system might be able to pay, in addition to out-of-pocket losses, at least some compensation to seriously disfigured and permanently disabled victims. Preferably, every such victim should be paid. If that makes insurance too costly, it may be necessary to preserve his right to sue a negligent driver.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—Yes, by means of a \$5000-deductible liability claim against a faulty driver.

American Insurance Association Plan—No.

New York State Plan—No.

Hart Plan—Yes, by means of a liability claim against a faulty driver for permanent disability or disfigurement.

DOT Plan—Yes, by means of a liability claim against a faulty driver for permanent disability or disfigurement as well as any medical expenses beyond the no-fault limit.

8. *Property Damage.*—Damage done by automobiles to property other than automobiles should be repaired with money from the car-owner's automobile insurance even if the accident was not his fault.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—Yes.

American Insurance Association Plan—Yes.

New York State Plan—Yes.

Hart Plan—No, not unless the motorist chooses optional property damage coverage.

DOT Plan—Yes, "ultimately."

9. *Compulsory Coverage.*—Every car owner should have to carry the basic no-fault automobile insurance. Companies could offer all kinds of optional extra coverages: higher benefits for pain and suffering, higher wage benefits, etc.

Do the major reform plans meet this objective? Yes.

10. *Automobile Damage.*—The consumer should have three choices of automobile damage insurance: 1) no collision insurance, 2) today's type of collision insurance that pays damage done to his car if the driver of another car caused the accident. The third choice should be offered in fairness to owners of cars with too little value to merit full collision insurance. Collision premium rates should be scaled, as some companies scale them now, to encourage construction of damage-resistant cars. Fire, theft and comprehensive insurance should be optional, as now.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—Yes, it originated the three-choice idea.

American Insurance Association Plan—No. It offers full collision insurance or nothing.

New York State Plan—No. Same as AIA.

Hart Plan—No. Same as AIA. But this is the only plan that would require premiums based on damageability of the car.

DOT Plan—No. "Ultimately" the same as AIA except that the motorist could choose deductibles under which he would pay out of his own pocket for repairs up to as much as \$1000 or one-third the value of the car.

11. *Premium Rates.*—They must be held down and, if possible, reduced. A system that pays benefits without attempting to establish blame can redirect to premium savings or improved benefits at least 25 per cent of the cost of today's liability insurance. Elimination of automobile-insurance payments for losses already covered by cheaper insurance will cut the premium further. Elimination of pain-and-suffering claims for minor injuries will cut costs even more. Do the major reform plans meet this objective? Yes, all claim to. But there is disagreement on the savings. The Keeton-O'Connell Plan puts a \$10,000 limit on no-fault medical and wage benefits because its actuary could not otherwise foresee reduced premiums.

12. *Price Comparisons.*—The driver-rating system should be standardized. A person's age, sex, where he lives, the car he drives, and how much he uses his car do appear to have a real bearing on his chances of having an accident. With no-fault insurance, companies should also design their rates around the size of the family, its other insurance and its income—in other words those factors that would determine compensation in the event of an injury-causing accident. The important thing is for each company to use the same rating standards, including identical geographic rate zones. Companies could compete on the basic price from which all rates would be figured by percentage increases or decreases. Shoppers would then find it relatively easy to compare prices.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No.

American Insurance Association Plan—No.

New York State Plan—No.

Hart Plan—Yes, it originated the idea.

DOT Plan—No.

13. *Claims Service.*—Insurance companies should report regularly to a Government agency their claims-paying practices, and the agency should publish data indicating how well each company satisfies its claims. CU's recent survey of claims experiences showed significant differences in the way companies handled their claims (CONSUMERS REPORTS, June 1970). Full knowledge of the quality of a company's service is essential to the consumer's rational choice of a company.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No.

American Insurance Association Plan—No.

New York State Plan—No.

Hart Plan—Yes, it originated the idea.

DOT Plan—No.

14. *Industrial Regulation.*—Automobile insurance should be regulated by a Federal agency instead of by each individual state. It would be appropriate for the motoring public to finance the agency with a tax on insurance policies. Present law exempting insurance companies from the antitrust laws should be repealed. Prices should be regulated by the market under surveillance of the new Federal agency. Few states can hire the professional staffs needed to cope with their regulatory obligations. A single Federal agency could afford highly competent attorneys, accountants and actuaries and could use their services



efficiently in the public interest. The American population is mobile. It travels on interstate highways, and it changes residence frequently from state to state. Americans need uniform motor-vehicle laws and uniform automobile insurance.

Do the major reform plans meet this objective?

Keeton-O'Connell Plan—No.

American Insurance Association Plan—Does not specify.

New York State Plan—No.

Hart Plan—No. Insurance regulation would remain with the states in consultation with a Federal administrator.

DOT Plan—No. Congress would pass a resolution urging the states to adopt model legislation to be drafted by the Council of State Governments along lines suggested by Washington.

Mr. Moss. Thank you, Dr. Warne.

Mr. Broyhill?

Mr. BROYHILL. Dr. Warne, in your accompanying article here you cite the 14 objectives that any reform plan should meet. Have you been able to cost out that plan and to calculate what the consumer would pay for such a plan as opposed to what he is paying now?

Dr. WARNE. Mr. Klein here is the author of this. Perhaps he could best answer it.

Mr. KLEIN. No; we haven't costed out the plan. We don't have the actuarial skills to do that, sir. We do point out that this plan, like the other ones that we compare it to, affords great savings, great savings in the matter of not paying duplicate claims and eliminating many "pain and suffering" claims, eliminating the cost of legal expense under the liability system.

Mr. BROYHILL. I have been asking this question. No one seems to know what this is going to cost the consumer. I think we ought to have this information before we reach final decision.

Mr. KLEIN. Yes; the actuarial studies need to be done more thoroughly. There have been several of them. Actually, the studies done in New York State for Mr. Stewart, when he was the insurance superintendent there, looked at a system much more comprehensive than what we proposed. That system would pay lost wages without limit, whereas we propose a limit based on the cost-of-living index figure for a reasonable standard of living in your particular communities. But in New York State the actuaries still found really quite substantial savings would come through their plan.

There is controversy about this, and we are certainly not going to give you the last word on that.

Mr. BROYHILL. Thank you.

Mr. Moss. Mr. McCollister?

Mr. MCCOLLISTER. No questions.

Mr. Moss. Mr. Guthrie?

Mr. GUTHRIE. Dr. Warne, you are perhaps more extreme than any witness we have heard with regard to the relationship between the Federal Government and States insofar as regulation of the insurance industry is concerned. You have testified that you would like to see rate regulation at the Federal level.

The Secretary, in his testimony before the subcommittee, indicated that there are certain benefits to be had from experimentation and meeting the needs of the various States, and the differences. Would you care to comment on that?



Dr. WARNE. Yes; I think we favor what one might call the Brandeis-Holmes approach of having the States as laboratories for experimentation. There is a certain merit in that, but our feeling is that we are here dealing with a very highly technical problem, a problem requiring actuarial skills, a problem requiring accumulation of statistics, a costing problem; a problem of the relationships with other very complex plans, health plans, and so on; and questions of living costs. It is a problem that has a magnitude that seems to demand a substantial degree of uniformity. That is to say, cars do not stay within State limits. They move about a great deal, and liability is very often an interstate problem. So that if the figures are to be equitable, we must develop a Federal system. In our judgment, the rate phase of this ought to be on the Federal level.

The question of consumer complaints and the handling of that sort of thing, we delegate to the State level. Mr. Klein can give a better answer.

Mr. KLEIN. No, I don't think so. I think you have said it all.

Mr. GUTHRIE. I note in connection with all of this that Senator Steers of Maryland, who formerly was an insurance commissioner, in his testimony before this subcommittee last week indicated that at the State level in Maryland he had only two or three individuals who he could rely on in connection with ratemaking.

From your studies, does this seem to be representative of the situation in all of the States?

Dr. WARNE. I think there are some States in which three people would be really far more than the technical force they would be able to apply to this problem. That is to say, Maryland may be in an advantageous position as compared to some States.

Mr. MCCOLLISTER. Would you have any idea what States those were?

Dr. WARNE. I think Mr. Klein has followed this more closely.

Mr. KLEIN. I haven't the information here, but there were studies done in the Senate Antitrust and Monopoly Subcommittee 3 or 4 years ago in which they looked at staffing of all insurance departments of the States for attorneys, actuaries, accountants, and other professional skills. I am sure the study is out of date, but I don't imagine it has improved very much in recent years with the tight budgets that the States have.

Mr. MOSS. Mr. McCollister, would you like to have the committee staff get that material for you?

Mr. MCCOLLISTER. I would be grateful.

Mr. MOSS. Would you arrange to get that, Mr. Guthrie, and supply it to Mr. McCollister?

Mr. GUTHRIE. I certainly will, Mr. Chairman. I have no further questions.

Mr. MOSS. Dr. Warne and Mr. Klein, I want to thank both of you for coming here and giving us the benefits of your studies and your views. It will be very helpful to the committee.

Dr. WARNE. Thank you.

Mr. MOSS. The next witness is Mr. Frank J. Max, Jr., president, CATRALA, Washington, D.C.

Is there a statement on file for Mr. Max?

STATEMENTS OF FRANK J. MAX, JR., PRESIDENT, CATRALA; ROBERT A. SMALLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HERTZ CORP.; WINSTON V. MORROW, JR., CHAIRMAN OF THE BOARD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AVIS RENT-A-CAR SYSTEM, INC., AS READ BY JOHN J. MURPHY, VICE PRESIDENT OF INSURANCE AND SAFETY, AND JOHN DAVIS, EXECUTIVE VICE PRESIDENT, RYDER SYSTEM; ACCOMPANIED BY S. M. EDIDIN, VICE PRESIDENT AND GENERAL COUNSEL, HERTZ CORP.

Mr. EDIDIN. Mr. Chairman, I am associated with CATRALA. My name is S. M. Edidin and I am an attorney. Mr. Max will be here shortly.

Mr. Moss. All right. Is Mr. Smalley present?

Mr. EDIDIN. I think the sequence that we have worked out involves the presentation by Mr. Max first and he should be here at 11 o'clock.

Mr. Moss. You are appearing, then, with Mr. Max, Mr. Smalley, and Mr. Morrow together?

Mr. EDIDIN. Yes.

Mr. Moss. As a group. Well, if there is no objection, we will take a recess until 11 o'clock.

(A 10-minute recess was taken.)

Mr. Moss. The committee will be in order.

At this time I understand we have Mr. Frank J. Max, Mr. Robert A. Smalley, and Mr. Winston V. Morrow, Jr.

Gentlemen, we are pleased that you appear here today. And, Mr. Max, I assume that you are the leadoff witness for this panel.

Mr. MAX. Thank you.

I am Frank J. Max, Jr., vice president of Avis Rent-A-Car System, Inc., and president of CATRALA, the Car & Truck Renting & Leasing Association. I am pleased to be with Robert A. Smalley, president and chief executive officer of the Hertz Corp., and a director of CATRALA, and John Murphy, vice president and director of Insurance & Safety of Avis Rent-A-Car System, Inc., who will read a statement by Winston V. Morrow, Jr., president and chief executive officer of Avis Rent-A-Car System, Inc. John Davis, executive vice president of Ryder System, is also with us and will present a brief statement.

CATRALA is the association of those firms and persons in the United States, the District, Puerto Rico, and Canada who are engaged in the rental and lease of cars and trucks. We have in excess of 1,500 members with the vast majority being small businessmen.

My purpose today is to convey to you the support of the board of directors and membership of CATRALA in your efforts to bring badly needed reform to our system of insurance and particularly to add our backing for the principle of a no-fault insurance system as contained in H.R. 4994 and related bills.

Insurance is the number one problem facing our industry today. The problem is of such magnitude that it is literally forcing some companies out of business. I will not take the time of the committee to list

the evils of the current so-called fault system. You know them better than I. Instead, I would like to address myself to the need for uniformity throughout the states and for immediate action.

The cost of insurance—if it can be obtained at all—has increased in recent years to the point that for many car and truck renters, the expense of insurance exceeds that of vehicle or people costs. We have not sat idly by complaining. We have tried to live and work within the system by careful selection of renters and watching costs. But this is no longer feasible—some change in the basis of insurance is needed.

At our recent annual meeting we devoted a substantial part of our program to insurance and the membership is now totally in support of a non-fault system. In my opinion, before our meeting a good many of us were opposed to the no-fault proposals believing, as apparently others still do today, that we must make people responsible for their actions. We also assumed that the present fault system does so. But after an explanation by Prof. Jeffrey O'Connell and other experts, our industry, understanding it for really the first time, was overwhelming in their support for the no-fault system. I suggest that an informed public will react similarly.

We think the no-fault principle is the best solution and should be adopted to the maximum extent possible. Because of this we oppose the provision in section 7(a) that would require the owner of a truck to contribute to the costs incurred by the occupants of an automobile. This is a major exception to the no-fault principle and would create inefficiencies and inequities.

Mr. Moss. I wonder if I might interrupt and state that that provision is eliminated from the new bill which is now available, H.R. 7514.

Mr. MAX. We have been made aware of that since the preparation of this statement and are delighted with that.

Mr. Moss. Thank you.

Mr. MAX. On behalf of the Board and the members, I would like to record our opposition to any such provision. We note H.R. 7514 introduced by our chairman on April 20 omits such a feature and we support this approach wholeheartedly.

The need for uniformity throughout the United States for people in our business is so obvious that I will not belabor the point. We are engaged in interstate commerce throughout all of the States and must have a consistent and uniform system under which to operate.

We are here because we are major consumers of insurance. We believe that the inherent efficiencies and advantages of a no-fault system must eventually benefit us as it does all other automobile owners.

With the improvements and amendments suggested by my associates, I would like you to know that you have our complete support and we stand ready to do whatever is necessary to assist in your efforts.

Thank you.

Mr. Moss. Thank you, Mr. Max. I am going to suggest, unless there is objection, that we permit the members of the panel to conclude all of their testimony before opening it to questions.

Mr. MAX. Mr. Smalley.



## STATEMENT OF ROBERT A. SMALLEY

Mr. SMALLEY. Mr. Chairman, and members of the committee:

My name is Bob Smalley. I am president of the Hertz Corp. I have in my possession a statement regarding the position of the Hertz Corp. with respect to the no-fault insurance system. Because of the length of this statement, I would prefer submit it to the committee and I would like to make several remarks and then submit the statement.

Mr. Moss. Without objection, the statement will be received and made a part of the record.

Mr. SMALLEY. We favor the principle of no-fault insurance which is set out in the bill before this committee. We do so for one basic reason. The consumers who rent our cars and trucks are entitled to this protection. No-fault is in their best interest and what is good for them or enables them to rent our cars and trucks is obviously in our best interest.

There are questions and problems raised by no-fault system and by particular pieces of legislation included in H.R. 4994. I have mentioned some of them in a statement which I am submitting to the committee, but I am convinced that questions and problems are far outweighed by no-fault potential benefits. My statement today makes several basic points. In the application of the no-fault principle, no distinction should be made based on the size of the vehicle or use to which it is put.

In the application of the no-fault principle consideration should be given to the development of standards to prevent excessive and unwarranted claims. No-fault principle is based on assumption that first-party insurance rather than legally determined fault is the basis for which compensation will be paid. Such assumption implies that governmental obligation to guarantee that persons using vehicles will be covered.

We suggest that, in view of the dismal results of relating insurance to vehicle ownership, arrangements be made to consider the merits of this proposal.

All of these are covered in greater details in the statement which I have submitted. I will be glad to answer any questions after Mr. Murphy makes a statement.

(Mr. Smalley's prepared statement follows:)

## STATEMENT OF ROBERT A. SMALLEY, PRESIDENT, THE HERTZ CORPORATION

Mr. Chairman, and members of the committee: My name is Robert Smalley and I am the President and Chief Executive Officer of The Hertz Corporation. Hertz, as I hope many of you know (otherwise we'll fire our advertising agency) is engaged in many aspects of the rental and leasing of personal property, primarily the rental and leasing of motor vehicles—cars and trucks. We are headquartered in New York, but Hertz operations are carried on in every state of the union and in over 100 foreign jurisdictions. Obviously, in view of the size of our vehicle fleet and with our far flung operations we're enormously interested in any aspect of insurance costs and certainly in the kind of situation represented by a studied and general approach to a change in the basic concept of liability under which we've carried on our business for so many years.

I've listened with great interest to the statements made on behalf of CATRALA, of which we are a member. I'd like to add my approval to what has been said.



I don't want to say that I have read H.R. 4994 all the way through. As a practical businessman, I usually leave this task to others—to specialists more versed than I in the intricacies of legislation—particularly legislation dealing with such an arcane, complex subject as insurance. But I have read enough of this bill and have discussed it sufficiently with specialists in the area to know that it is bold in concept, broad in scope. And yet its central theme—swift compensation of auto accident victims for economic loss, regardless of fault, through first-party insurance covering everyone involved—is simple and readily understood. I think we are on the threshold of a new era in legal techniques for dealing with an old problem—much like the era that began a half century ago with the adoption of workmen's compensation laws in the various states.

I will return to H.R. 4994 in a few moments to offer some concrete observations and one or two suggestions I hope you will consider. But first, Mr. Chairman, let me digress briefly to touch upon some facts about our business that will show why no-fault legislation is so important to us.

It all began with the automobile, of course—the marvelous machine that has given us 20th Century Americans fantastic mobility and freedom, as well as monumental problems. I won't venture to say whether our relationship with the automobile is a passionate love affair or a marriage of convenience. Whichever it is, we and the automobile are clearly stuck with each other, for better or worse.

At our industry's national convention recently, a certain prominent critic of the automobile was invited to address the assemblage on automobile safety. After listening to a characteristically scathing 50-minute address, somebody in the audience earnestly proposed that the country turn to mass transportation and drastically curtail use of the automobile. The speaker commented that it was a possible solution, if one was prepared to accept the resulting mass unemployment and general economic devastation. The speaker, of course, was Ralph Nader. Mr. Nader fiercely attacks what he regards as deficiencies in the design and engineering of cars. But he understands fully the depth and extent of our dependence on the automobile, not only as a means of transport but as a means of livelihood.

Precisely because we can't live without the automobile, our business and that of our industry—renting and leasing cars and trucks when and where needed—is today an indispensable service. It is a service used by the vacationer, the business man, the military, the professional, the retired, and all the millions who find that in their daily lives, whether at home or away, there just is no substitute for an automobile, where and when you want it.

The connection between renting someone a car and providing him with insurance goes back to the beginnings of the business. In the early days, people who rented cars often did not own one. And of those who did own cars, few carried liability insurance to cover injuries to third parties resulting from an accident with the rented vehicle. And so it came about that Hertz provided liability insurance for every customer as a part of its rental contract.

Over the years, this insurance has been greatly broadened and improved. Today, all the major national companies provide their vehicle rental customers with liability coverage which is primary with respect to all other insurance. That is, the insurance on the rented vehicle must be exhausted before the customer's own insurance is called upon. Our industry took genuine pride in these advances, and believed a kind of zenith had been achieved in the realm of car rental insurance. Little did we know what lay ahead.

Until publication of the Keeton-O'Connell Basic Protection Plan in 1965, scarcely anyone would have predicted that in so short a time the liability insurance system itself would be scrutinized and found wanting. With astonishing swiftness, government, the professions and the insurance business have all mobilized to re-examine and question the very foundation of the entire structure. I refer, of course, to the tort doctrine, which makes recovery of damages entirely contingent upon the presence or absence of fault in the legal sense. In my opinion, Mr. Chairman, the far-reaching and intensive study of this question by your Committee, as reflected in H.R. 4994, has removed all doubt that the no-fault concept, intelligently implemented, is socially desirable and possesses clear advantages over the present system.

As originally drafted, the bill contained one feature that we are adamantly opposed to—the section according different treatment to vehicles "larger than an ordinary passenger automobile." In our view, this would impose an unfair and discriminatory economic burden upon owners of trucks and other commercial vehicles. I understand the Committee is considering the removal of that feature of the bill, and I strongly urge that you do so, as it is unwarranted and unnecessary. Commercial vehicles carry the goods and the finished products used

by every man, woman and child in the country—the cost of their operation is borne by everyone in the prices paid for the essentials of life. It would be unwise and unfair to use the no-fault concepts as a device to shift to the general consuming public a disproportionate share of the costs of vehicular accidents. That commercial vehicles will bear *no less* than their fair share of the burden is assured by the bill's preservation of the right to sue for damages in cases of castastrophic harm.

Before leaving the subject of costs, I offer two further observations. Cost, after all, is just as crucial to the success of the program embodied in H.R. 4994 as it is to the survival of any private business.

My first point relates to costs in the aggregate. If I understand the bill, it places no limit on the hospital, medical, rehabilitative and related expenses that can be recovered, save only that they be "appropriate and reasonable expenses necessarily incurred". I am sure the use of this language presupposes a proper review of all claims to be sure the standards of appropriateness, reasonableness and necessity are met. However, the bill also mandates that all payments for net economic loss be made "as such loss is incurred", and imposes a penalty of 2% a month on payments delayed over 30 days after receipt of "reasonable proof of the fact and amount of loss realized". Considering the volume of claims the system will have to process, I would ask the Committee to consider whether there may be insufficient opportunity for scrutiny of excessive or unwarranted claims.

The uncertainty of recovery under the present tart sytem and the delay in recovery or payment inherent in it tended to keep such costs down, particularly in view of the part that the claimant or his doctor was making the outlay. While that system unquestionably did injury in many cases, removal of all of the restraints may act to sharply increase the costs of what is regarded as appropriate or reasonable expenditures. Some constraint is required, and some of our recent experience with medicare indicates, to prevent the costs of what is otherwise a fine program, from overrunning what Society is willing to pay. The principle of what I'm talking about is seen in this very bill in terms of the amount awarded for loss of earnings. The 85% of earnings limitation is just the sort of gentle compulsion on an individual that I have in mind as a principle to be applied with respect to medical costs. Many insurance policies handle this by way of an initial deduction or an overall limitation. I do not suggest that, since I fully appreciate the importance of assuring prompt reimbursement for medical and related expenses, as a primary goal of the entire no-fault approach. It occurs to me that our collective experience under state workmen's compensation laws may contain valuable clues to attainment of both objectives here—prompt payment *and* proper control. We now have, as I mentioned earlier, a 50-year accumulation of statutory and administrative precedent under these laws, which can be seen as the direct lineal ancestors of the automobile no-fault plan we are discussing today. Accordingly, I would urge the Committee to draw on our successful experience with workmen's compensation in the event it shares my uncertainty over the question of costs.

My second observation looks more to the future than to our immediate concern, and relates to the peculiar—perhaps unique—situation of vehicle lessors. As I mentioned earlier, the history of our business has ordained that our customers receive insurance coverage as a part of the total vehicle rental package. Largely I suppose this is some sort of historical accident related to notions, now largely discarded, about the inherent danger of a motor vehicle. And as the owner of the vehicle, we would provide the first-party accident insurance called for by the bill, presumably on the same basis. Unlike the insurer of the family car, however, there is no way in which our insurer can rate our customers as individual risks when we put them behind the wheel of our vehicle. The result is that in a rental vehicle, the best risk incurs the same cost for coverage as the poorest.

We think the time is not far off—it may be here already—when it will be practicable to require that every holder of a driver's license bear the responsibility of maintaining his own individually rated automobile accident insurance, both first party and liability. In other words, we would insure the driver, not the car. This may be the only way by which we can avoid the problem of the uninsured motorist. Figures I've seen indicate that, even in the District, 80% of vehicle owners carry no insurance. The only way I would think of reducing if not eliminating the problem would be for each driver to show evidence of insurance at the time he got his driver's license.

The vehicle owner would still be required, of course, to carry excess or supplemental coverage so there would be no gaps, but the driver's own insurance would be primary regardless of whether the accident occurred while he was operating

his own vehicle, a friend's, or one of ours. I urge the Committee to consider the merits of this proposal, for such an arrangement is truly more logical than the practice of relating the obligation to maintain insurance to ownership of a particular vehicle, instead of to possession of an operator's license.

I have saved for the last that feature of the bill which evokes my warmest enthusiasm and support—uniformity throughout the land. A fundamental change in automobile insurance such as that represented by the no-fault concept cannot, in my judgment, be rationally introduced except under pre-emptive federal law such as H.R. 4994, or at least under standards requiring substantial uniformity from state to state. Consider, for example, the utter chaos we would face in our business if the traveler who drives his rental car through two or three states in the course of a single trip must be covered for no-fault in one, liability in another, and a combination of the two in a third. Even assuming we ourselves will understand what we are doing, I blanch at the thought of explaining to a harried customer the varying coverages required under conflicting or inconsistent state laws. The same will be true, although to a lesser degree, in the case of the private vehicle owner. In this respect, there is no analogy to workmen's compensation, for a job site is fixed, whereas an automobile represents the ultimate in mobility.

Mr. Chairman and Members of the Committee, I deeply appreciate having had this opportunity to present my views on this vital subject, and thank you for your attention. Once again I salute you for your outstanding contribution to the reform of our automobile accident compensation system.

Mr. Moss. Thank you, sir. We will now hear from Mr. Murphy.

Mr. MURPHY. Thank you.

I am John J. Murphy, vice president of Insurance and Safety, Avis Rent-a-Car System, Inc. I will read a statement of Winston V. Morrow, Jr., chairman of the board and president and chief executive officer, Avis Rent-a-Car System, Inc. Mr. Morrow is in Europe and cannot be here today, although he would love to be. The statement:

#### STATEMENT OF WINSTON V. MORROW, JR., AS READ BY JOHN J. MURPHY

For many years during my career with Avis I have been compelled to watch as my company poured millions of dollars into the existing system of vehicle liability insurance.

While always somewhat uneasy over these expenditures, it was not until the findings of the Department of Transportation were made public that I was able to focus on the thought that our millions might be going to a system of reparation that is, as stated in a DOT report, inequitable, inadequate, and insufficient, and unresponsive to existing social, economic, and technical conditions.

In articles commenting upon the DOT report many statements were made which tend to verify the above conclusions. Some very troublesome and provocative statistics that come to mind, albeit based upon fairly small samples, are that 55 percent of all severely injured people collect nothing from automobile liability insurance, while those accident victims suffering less than \$500 in economic loss collect 400 percent of such loss. While it has never been, and should not be, the goal of any automobile accident reparations system to provide full compensation for all economic loss suffered by victims of auto accidents, it does occur to me that the millions that are now being spent could be put to better use.

It is against this background that my company has determined that the basic no-fault concept, calling for prompt payment of out-of-pocket expenses and lost wages to auto accident victims, regardless of



fault, through mandatory first-party accident insurance, is on balance in the interest of the public and is in any event clearly to be preferred over the present system.

I am aware, however, that a growing number of States are considering various kinds of no-fault legislation, some retaining the tort system in part and some not, all with different limits for economic loss, and with many other variations. We are most concerned and apprehensive, therefore, that, due to this appalling lack of uniformity of definition and standards, a state of no-fault anarchy would exist if the several States were to be free to enact legislation currently under consideration.

The obvious solution is Federal legislation which will create a uniform system of insurance, supervised by the States but subject to the requirements of Federal law and regulations.

Accordingly, I am pleased to express my support for the principle of Federal no-fault insurance as set forth in H.R. 4994, in the hope and belief that such legislation will correct many of the abuses, delays and inequities inherent in the present tort insurance arrangements while at the same time eliminating this possibility of no-fault anarchy.

As presently written, however, H.R. 4994 contains two principal defects which will need correction before the bill can fully achieve its objectives and in order that new abuses of equal magnitude are not substituted for the existing ones.

First, is the provision for payment in full of reasonable medical, rehabilitative and other expenses without further definition, limitation or standard. There appears to be no incentive to keep expenses of this kind within bounds, and we need only to look to our brief experience with medicare and medicaid to see that the absence of any finite limits could cause this plan to be prohibitively expensive. While the bill requires such expenses to be appropriate and reasonable, these standards could be very difficult to apply in practice, especially in view of the provision for imposing a 2-percent interest charge if payment is not made by the insurer within 30 days.

In this connection it would certainly seem appropriate to look to the Workmen's Compensation systems, reinforced by clearly understandable standards, that have been successful over a 55-year period, for a method of calculation which could be utilized in H.R. 4994.

The second fault in H.R. 4994 is the requirement contained in section 7 that larger vehicles be responsible for at least a percentage of each loss in every accident. These provisions deviate from the no-fault concept by imposing absolute liability on certain types of vehicles for damage to others, and would thus substitute a new abuse for an old one. Moreover, such provisions can hardly be supported in a bill which retains, as does H.R. 4994, the tort system for so-called catastrophic harm.

I applaud the framers of H.R. 4994 for producing a firm proposal which can be the beginning of a new era in changing our institutions to better serve the public interest.

Mr. Moss. Thank you.

Mr. MAX. We have another gentleman who would like to make a statement.



## STATEMENT OF JOHN DAVIS

Mr. DAVIS. Thank you.

My name is John Davis, executive vice president of Ryder System. And Ryder System's primary business is full service truck leasing. We have over 37,000 vehicles in use. Our company now spends over \$10 million per year to support our insurance program. Much of the cost of it comes about from our having to defend our position in accident claims, but the important point is that only a small portion of this cost ever reaches the injured parties.

We feel that the national no-fault motor vehicle insurance act is a sound concept to avoid the present inequities, inefficiency and friction that exist today with the present adversary and tort system. We congratulate the committee in pushing ahead to get this bill approved.

Mr. Moss. Thank you, Mr. Davis. If you would like, we can bring another chair up and you can remain at the table.

Now, Mr. Brothill?

Mr. BROTHILL. Mr. Max, I will direct this question to you and, of course, all of the panel through you. Do you believe that if such a program as outlined in H.R. 7514 is enacted, that the insurance costs of your companies will be substantially reduced and thus reduce the insurance costs to the users or leasers of your automobiles or vehicles?

Mr. MAX. Well, we are not convinced, frankly, that there will be any immediate change. As a matter of fact, we can visualize under some circumstances that it might possibly increase.

The important thing is that we think the money will get into the hands of people who are injured, who are not now getting this coverage. As was presented previously, 55 percent of the people who are injured are not getting benefits today. We think the no-fault system will correct this. We think that perhaps down the line further there may be some savings immediately. We have some question on this. If I may, I would like Mr. Murphy to answer that question also. He is working on this, on a day-to-day basis.

Mr. MURPHY. I can't speak for Mr. Morrow on this, but speaking for myself, I would say that the cost could very well be greater, depending upon the number of uncovered claims that will have to be paid. From an industry point of view, it is my hope that this law, along with all of the other ancillary things that are being done—improvement in motor vehicle standards, better restraint systems—all of these things put together in a system looking to go 3 years down the road will give us an environment both physical, mechanical, and legal on which we can run our cost better and select our customers on the ability to drive, at the same time confident that we will be responsible largely for those people in our new vehicles. And if we give them all of the new vehicles with the best restraints, they will stand a better chance of not being hurt in a collision in our vehicle. I think this will help our industry make its contribution.

Mr. BROTHILL. You are not advocating the passage of this legislation in the hope of achieving lower insurance cost for your company?

Mr. MURPHY. No, we are not.

Mr. BROYHILL. With regard to the conclusions that you come to, Mr. Murphy, and also Mr. Max, do you have any studies or any documentation on which you can base these conclusions?

Mr. MURPHY. Actually we have accepted pretty much on faith the DOT studies and we have felt they have had more access and spent 2 or 3 years doing it, and we have accepted their conclusions. We all have thought from the beginning that our system, based on delivering defense rather than reparation, was very costly. It has never occurred to me that the system of delivering defenses was at fault. We can deliver reparations better than we can build defense.

Mr. GUTHRIE. You gentlemen addressed yourselves to the desire for uniformity. The proponents' State-by-State approach says there are differences among the various States that require some reflection in a State-by-State approach. Do you have any comment on that, Mr. Murphy?

Mr. MURPHY. No; I think that is merely self-serving by those who wish to be more important on the State level.

Mr. GUTHRIE. Have you followed the experience in Massachusetts, your member companies, and what has been their experience?

Mr. MURPHY. I am a member of the Massachusetts Bar, for one thing, and I am very familiar with the Massachusetts situation.

Mr. GUTHRIE. Would you describe the situation up there before and after enactment of the Massachusetts law?

Mr. MURPHY. The situation before enactment was that Massachusetts had since 1928 or 1929 a compulsory liability law—\$5,000, \$10,000 without property damage being involved. Over the years the situation had developed whereby practically everyone who had an accident of any sort would hire an attorney and make a claim of personal injury because he wasn't certain that he had property damage coverage.

As a result, Professor Kinard of Michigan was quoted in one of the seminars that I went to as saying in Michigan 30 percent of people having claims, retaining counsel, but 70 percent in Massachusetts.

Mr. GUTHRIE. I think the Department of Transportation studies reflect 82 percent.

Mr. MURPHY. Having taught at Boston University for 10 years during the period of the 1950's, I was very close to this and obviously any program that Massachusetts would develop, taking away the nuisance value and smaller claims, would show an immediate drop in claims cost. I am not sure that the Massachusetts law, which is not a no-fault law, it is a tort law with subrogation on small claims and full action in the courts, very easily obtained by very small, low levels of doctor bills, and so forth, the Massachusetts law is not a no-fault law. It should have some immediate improvement because it is going into a situation that was already very, very poor. It should correct the Massachusetts situation but I would never recommend it in lieu of the no-fault concept here espoused in H.R. 4994 and H.R. 7514.

Mr. Moss. Any further questions?

Gentlemen, I want to thank each of you for coming here and giving the committee the benefit of your views. I am certain that they will be given careful consideration during the deliberations of the committee.

At this point, gentlemen, we have no further witnesses, unless Mr. Neill Crowley is in the room.

The committee, then, will adjourn until 10 tomorrow morning and our first witness will be the Commissioner of Pennsylvania Insurance Department.

The committee is adjourned.

(Whereupon, at 11 :25 a.m., the hearing adjourned, to reconvene at 10 a.m., Tuesday, April 27, 1971.)

# NO-FAULT MOTOR VEHICLE INSURANCE

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TUESDAY, APRIL 27, 1971

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE AND FINANCE,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2232, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The committee will be in order.

Our first witness this morning is Dr. Herbert S. Denenberg, Commissioner of the Pennsylvania Insurance Department.

## STATEMENT OF DR. HERBERT S. DENENBERG, COMMISSIONER, PENNSYLVANIA INSURANCE DEPARTMENT

Dr. DENENBERG. Mr. Chairman, I have a prepared statement. I would like to submit it for the record and read an abridged version.

Mr. Moss. Without objection, the statement will be placed in the record in its entirety.

Dr. DENENBERG. I would first like to thank you for the opportunity to be here so that you may hear my views.

I would also like to congratulate this committee on its work relating to no-fault legislation. Such Federal investigations have been an important factor in improving the performance of State government. We in insurance know how important Federal investigations have been in improving State insurance law and State insurance regulation.

The Pennsylvania Insurance Department stands ready to cooperate fully in this or any other future investigation.

The automobile insurance and reparations system operates like a legalized racket of colossal and cruel proportions—and everyone knows it.

The automobile insurance and reparations system is barbaric in its slowness to compensate, its inadequacy and uncertainty of compensation—and everyone knows it.

The automobile insurance and reparations system is the most wasteful, the most inefficient, the most extravagant of our methods of paying accident victims—and everyone knows it.

The automobile insurance and reparations system is heaping abuse and disaster on the public, the automobile accident victim, and the insurance industry—and everyone knows it.

The automobile insurance and reparations system now has only a single class of beneficiaries, trial lawyers, who have made a billion dollar business of claims and lawsuits, in a grand legal war in which they are the only real victors—and everyone knows it.



The time is ripe for comprehensive reform of our automobile insurance and reparations system. One of the most urgently needed of these reforms is no-fault automobile insurance legislation—to provide prompt, virtually automatic compensation to all automobile accident victims.

Everyone now knows the vital statistics that point toward auto reform and toward no-fault and I will not recite them.

#### PUERTO RICAN NO-FAULT LAW

I was one of the coauthors—with Dr. Juan B. Aponte—of the Puerto Rican no-fault law, the social protection plan, which was passed by the Puerto Rican Legislature on June 26, 1968, and which went into operation on January 1, 1970.

The original work on this study goes back to June 27, 1964, when the Legislature of Puerto Rico called for a study of a compensation plan to protect the victims of automobile accidents. Dr. Aponte and I completed our study in February 1966.

Both before and after our study, Dr. Aponte and I heard an endless chorus of arguments on why no-fault would not work in principle and why our particular plan would not work in practice. Since the social protection plan went into operation, the arguments of the opponents of no-fault have clearly been disproven on the basis of available evidence.

Now Puerto Rico's no-fault law is acclaimed an overwhelming success, even by those who opposed the plan initially. The first year of operation of the no-fault law registers one of the most dramatic success stories in the history of social legislation.

Insurance industry lobbyists in Puerto Rico claimed a no-fault law would cause automobile accidents to skyrocket because even those who negligently caused injuries and accidents would be entitled to benefits. After the law was passed the automobile accident and fatality rate went down, rather than skyrocketing upward. In 1969, for example, there were 541 automobile deaths. In 1970, the first year of operation of the plan, there were only 451 deaths.

One of the reasons for the fact that Puerto Rico became a safer place after the no-fault law went into operation, is that the government corporation which administers the law—ACAA, pronounced "Aah-kuh," Administracion de Compensaciones por Accidentes de Automoviles—operates an accident prevention division. The division, which launches safety campaigns, utilizes its statistics on the most common causes of accidents. It has launched one special safety campaign dealing with pedestrian safety and another campaign to orient schoolchildren, especially those in rural areas, about automobile accident prevention.

The no-fault law may also help hold down fatalities and injuries by providing better medical care to all auto accident victims. Intensive care and a complete range of treatment by specialists are now available to all automobile accident victims. As ACAA pays for all hospital and medical benefits without limitation, the victim is now assured of the attention he needs. Before the new law, many victims simply could not finance their medical treatment and had to depend on public hospitals with inadequate facilities and staff for many types of automobile victims.

It was also argued that Puerto Rico's no-fault law would result in an upsurge of litigation. The opponents of no-fault argued that every accident victim would take his no-fault benefits and still sue. Under the law, tort recoveries are possible, but \$1,000 is deducted from any recovery for pain and suffering, and \$2,000 or the amount of no-fault benefits, whichever is greater, is deducted from any recovery for economic loss.

In practice, the no-fault plan has not encouraged litigation but has, in fact, discouraged it. One of the largest automobile insurers on the island indicated it did not have to pay a single liability claim for automobile accidents during the first year of operation. No-fault benefits, paid promptly, fairly, and automatically apparently satisfy a large proportion of all victims. The no-fault law of Puerto Rico pays all medical and hospital benefits, death benefits up to \$15,500—which includes a \$500 funeral benefit—dismemberment benefits up to \$5,000, and disability benefits up to \$50 a week the first year and \$25 a week the second year.

Critics of the Puerto Rican law initially argued that the universal payment of benefits by a government agency would be inefficient and slow, at best, and lead to a bureaucratic breakdown of major proportions.

The fears of the critics were magnified when the newly elected Governor opposed the law and delayed the appointment of the executive director of ACAA until the end of July 1969, only 5 months before the law was scheduled to go into operation.

Despite this foot-dragging, the plan went into operation promptly and efficiently. The first death claim was paid in a matter of hours, and by end of the plan's first week of operation, 42 persons were receiving benefits. Now, if a claim is filed promptly, most benefits commence in about 2 weeks, and funeral benefits are paid in 48 hours.

During the first 6 months of operation, benefits were paid to 13,492 persons. By the end of the first year, that figure was up to 28,133. In 1970, ACAA paid or reserved \$3,465,747 for medical benefits; \$54,100 for dismemberment benefits; \$638,043 for disability, and \$1,811,596 for death benefits.

Expenses for the plan for the first year were about \$2 million, producing an expense ratio of only about 11 percent; that is, \$11 of expenses for each \$100 of premiums.

Critics of the Puerto Rico no-fault law also claimed the new approach would bankrupt the island of Puerto Rico. Some insurance industry lobbyists claimed the plan would cost \$40 million a year, which would be enough to pay for the plan over five times in view of actual experience. The critics did persuade the legislature to raise the annual premium from \$25 to \$35 per registered vehicle.

ACAA collected about \$18 million for 1970 and incurred losses and expenses of approximately \$8 million. Thus, a surplus of \$10 million was produced. With this kind of experience, the legislature could substantially raise benefits or lower premiums.

The no-fault law of Puerto Rico indicates that the "States"—Puerto Rico is a "State" within the meaning of H.R. 4994—can solve their automobile problem, and tailor the system that best suits their needs and circumstances.

Puerto Rico has worked out a solution to its problem without the need of Federal interference. H.R. 4994 would disrupt and interfere with this most successful automobile insurance plan in operation in any U.S. jurisdiction.

#### STATE OR FEDERAL SOLUTION

There is a clear and overwhelming consensus that no-fault is one of the most important solutions to the automobile insurance and reparations problem. The critical issue is whether there should be a Federal or State solution. Unfortunately, the March 1971 report by Secretary of Transportation Volpe, entitled "Motor Vehicle Crash Losses and Their Compensation in the United States," gives us little or no help on the toughest question. Secretary Volpe merely says: "Experience with diverse plans in the States is essential and one State has already, this January, taken a step down the road. The States are the best arena in which to solve the problem."

No-fault proposals have come forth in profusion. There is a rich array of possibilities, and a State-by-State solution will permit trial and error, and needed experimentation and variation. We need not put all of our eggs in one basket, but can proceed to work toward the optimum system as each State goes its own way and develops new approaches and new mechanisms of compensation. The Federal system's flexibility should be utilized; it offers an ideal laboratory for social innovation and pioneering.

If experience with diverse plans in the States is essential, a Federal plan may be precluded but not Federal standards. Secretary Volpe, unfortunately, offers no enforceable standards and nothing more than a nice essay on the merits of no-fault legislation, an essay which cost the United States \$2 million.

I would urge Congress to enact basic standards to which all States must comply. It is clear that the States, if left to their own devices, will lag behind the times in getting needed social insurance legislation on the books. The pitiful performance of the States in workmen's compensation is perhaps the premier example of the legislative lag which has all too often characterized State action.

The Federal standards should not only set minimum requirements but should sweep away any State constitutional barriers to no-fault legislation. For example, in Pennsylvania, article 3, section 18 of our Constitution creates a substantial barrier in the way of no-fault legislation. That provision of the Pennsylvania Constitution states that—

In no other cases (other than those within the purview of Workmen's Compensation) shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the General Assembly shall prescribe for whose benefits such action shall be prosecuted.

Whether minimum standards are to be adopted or whether the approach of the concurrent resolution is to be followed (H. Con. Res. 241), Congress should consider Federal legislation to pave the way for State no-fault action and to assert the supremacy of the Federal law in this area.

Congress can force needed action on no-fault legislation and yet have the checks and balances of our Federal systems unimpaired. There are overriding advantages to preserving State power which are typically



appreciated in the abstract but often forgotten in practice. Governmental power cannot always be depended upon to perform in the public interest, as the history of both Federal and State governments indicate. The consumer interest may be protected for a time in one administration or another, subject to the whims of time and election results. An important guardian of the public interest is the dispersion of power between State and Federal government, so each can discipline the other and so both can compete to further the public interest.

We should seek to avoid undue concentration of political power, and the Federal system does this through decentralization and dispersion of power between two levels of government.

Undisciplined power tends to become unresponsive at best and corrupt at worst, and one of the more effective ways of disciplining power is the split of power in a Federal system. This has been demonstrated most recently by the disciplining and salutary impact of Federal surveillance on the State insurance regulation. This is creating better regulation than we might have if we consigned insurance to exclusively Federal control—which might go the way of the Interstate Commerce Commission, the Federal Trade Commission, and some of the other less celebrated Federal regulatory endeavors.

The States can prod the Federal Government into action as well as the converse. The States initiated seat-belt legislation before Federal action was taken at the national level on this subject. Consumer-oriented State administrations, such as that of Governor Shapp in Pennsylvania, are bound to help stimulate the Federal Government toward a more pro-consumer policy in the years ahead.

The final result may be better for all if we have Federal Government prodding State government, rather than a single source of power and authority in Washington.

There are still other important advantages of State power. As trite as it may sound, State power is closer to the people. It is much easier, for example, to talk to a State Insurance commissioner than a comparable member of the President's cabinet. A no-fault law, such as H.R. 4994, not only creates Federal auto accident law but also Federal insurance regulation.

The Federal Government through H.R. 4994 could annex yet another important State responsibility and enmesh it in its unreachable bureaucracy. Anyone who has spent time in Washington knows that it is no figure of speech to talk of a Federal bureaucracy too far removed from the people. The Federal colossus may be too big and unwieldy already, a colossus which even the President cannot control. State power, in contrast, is more susceptible to direction and control by the Governor and the people of the State.

State insurance regulation cannot be preserved if a Federal no-fault law transfers substantial insurance regulatory responsibility to Washington, D.C. This will mean not only a critical subtraction from State authority, but a split of responsibility which is likely to be disruptive and which is not likely to be viable.

H.R. 4994 would substantially destroy State regulation by such a transfer and division of responsibility. Section 5 of H.R. 4994 regulates the terms of the insurance contract, giving the Secretary of Transportation the power to approve the terms and conditions of the contract. Under section 6, the Secretary of Transportation regulates



the statistical plan, including policy provisions and classes of risk and rating territories, in order to accomplish the purposes of the statistical plan required by H.R. 4994. Under section 6, the Secretary also appoints statistical agents. Under section 7, the Secretary shall organize an assigned claims bureau and an assigned claims plan in each State.

H.R. 4994 should not destroy State insurance regulation in the name of automobile compensation reform. If this committee wants Federal insurance regulation, it should consider the full implications of that decision and not do so by indirection.

There are good reasons for preserving State insurance regulation, and such regulation is not inconsistent with sound and immediate automobile compensation reform.

There are other reasons for going with State-by-State no-fault plans that will not disrupt existing regulatory patterns. We know the strengths and weaknesses of State insurance regulation and we are now on our way to improving State regulation. Federal insurance regulation would represent an unknown adventure.

It has been argued that a State-by-State no-fault plan would be more costly than a Federal plan. Secretary Volpe was quoted in the press as saying:

I imagine the cost would be less if the same type of no-fault insurance were available throughout the country.

Secretary Volpe went on to say :

What I object to is Federal regulation of insurance.

But this is more than a jurisdictional dispute. It goes to the heart of the preservation of our State-Federal system and of the liberties and freedoms that system helps protect and perpetrate. There are touchstones other than cost.

Even if cost were the only touchstone, it is still far from clear that a centralized, Federal bureaucracy can deliver the goods more efficiently than the States. There are efficiencies and economies in the dispersion and decentralization of power that are becoming more obvious each day. In terms of costs as well as other more important considerations, there are no impelling reasons for legislating a Federal takeover of no-fault laws and existing State authority.

There are also good reasons for allowing differences in compensation plans to reflect the economic, political, and social variations between jurisdictions. Income variations are the most obvious example. New York, with a per-capita income of \$4,442, may need or want a different plan than Puerto Rico, with a per capita income of \$1,426, or Mississippi with a per capita income of \$2,218.

#### THE MIDDLE GROUND

I would urge you to create standards for the compensation of automobile accident victims without preempting or destroying State regulation of insurance. The purposes of H.R. 4994 are worthy, but it goes too far. The purposes of the concurrent resolution—House Concurrent Resolution 241—are also worthy, but it does not go far enough. It merely makes the case for no-fault legislation and calls for action.

Somewhere between H.R. 4994 and House Concurrent Resolution 241, there is an appropriate middle ground which would require State

action but not be destructive of the Federal system. Somewhere between H.R. 4994 and House Concurrent Resolution 241 there is a middle ground which will assure protection of the automobile accident victim but not destroy the protection of the balance of power between the State and Federal Government.

Thank you.

(Dr. Denenberg's prepared statement follows:)

STATEMENT OF DR. HERBERT S. DENENBERG, COMMISSIONER, PENNSYLVANIA  
INSURANCE DEPARTMENT

The automobile insurance and reparations system operates like a legalized racket of colossal and cruel proportions—and everyone knows it.

The automobile insurance and reparations system is barbaric in its slowness to compensate, its inadequacy and uncertainty of compensation—and everyone knows it.

The automobile insurance and reparations system is the most wasteful, the most inefficient, the most extravagant of our methods of paying accident victims—and everyone knows it.

The automobile insurance and reparations system is heaping abuse and disaster on the public, the automobile accident victim, and the insurance industry—and everyone knows it.

The automobile insurance and reparations system now has only a single class of beneficiaries, trial lawyers, who have made a billion dollar business of claims and lawsuits, in a grand legal war in which they are the only real victors—and everyone knows it.

THE TIME IS HERE FOR COMPREHENSIVE AUTO REFORM

The time is ripe for comprehensive reform of our automobile insurance and reparations system. One of the most urgently needed of these reforms is no-fault automobile insurance—to provide prompt, virtually automatic compensation to all automobile accident victims.

Everyone now knows the vital statistics that point toward auto reform and toward no-fault. We have to pour one dollar into the automobile bodily injury liability insurance to get out forty-four cents in benefits, of which only fourteen cents goes for medical expenses and wage loss not otherwise recoverable. (Of the forty-four cents, twenty-two cents goes for pain and suffering, eight cents for expenses otherwise recoverable.)

Other forms of protection can return ninety cents on the dollar or even more in benefits. Thus the system is clearly inefficient and unreasonably and intolerably expensive.

With such monumental inefficiency, it is no small wonder that victims are not adequately compensated. Victims who suffer from \$10,000 to \$24,999 in economic losses collect only 60 percent of their losses and those who suffer more than \$25,000 in economic losses recover only 30 percent of their total losses. Only about one-third of recovery for losses due to serious injury or property damage was from tort (through automobile liability insurance or otherwise). The only persons who do comparatively well, other than trial lawyers, are the claimants whose losses are less than \$500; they recover over twice their economic loss on the average. Only about 47 percent of the seriously injured recover anything at all from tort reparations, through liability insurance or otherwise. These inadequate payments may mean inadequate rehabilitation and medical care, and an array of financial hardship, including lower standards of living and breakup of families.

Benefits arrive not only too little but too late. Automobile lawsuits involving serious injury on the average require over two years to reach termination, and in large metropolitan areas such as Philadelphia, the delays may be even longer. While waiting for the resolution of his lawsuit, the victim has nothing but uncertainty and aggravation. Instead of needed compensation, he has a lottery ticket which depends on the often-catalogued whims and uncertainties of litigation.

No-fault automobile insurance can eliminate the deficiencies of the present insurance and reparations system. It simplifies the insured event by providing payment to all automobile accident victims. This makes speed, efficiency, and

economy possible. It provides payment, in most cases, by the victims own insurance company, thus further eliminating adversary overtones to the settlement process.

No-fault automobile insurance gives the consumer what he wants—payment right after an accident rather than a slow and uncertain gamble, with chances of success less than fifty-fifty for the seriously injured who need compensation the most.

#### THE PUERTO RICO NO-FAULT LAW

No-fault automobile insurance can achieve its objectives. This has been most clearly demonstrated by the recent experience with the Social Protection Plan of Puerto Rico, the first no-fault law ever passed in a United States jurisdiction.

I was one of the co-authors (with Dr. Juan B. Aponte) of the Puerto Rican no-fault law, the Social Protection Plan, which was passed by the Puerto Rican legislature on June 26, 1968, and which went into operation on January 1, 1970.

The original work on this study goes back to June 27, 1964, when the legislature of Puerto Rico called for a study of a compensation plan to protect the victims of automobile accidents. Dr. Aponte and I completed our study in February, 1966.

Both, before and after our study, Dr. Aponte and I heard an endless chorus of arguments on why no-fault would not work in principle and why our particular plan would not work in practice. Since the Social Protection Plan went into operation, the arguments of the opponents of no-fault have clearly been disproven on the basis of available evidence.

Now Puerto Rico's no-fault law is acclaimed an overwhelming success, even by those who opposed the plan initially. The first year of operation of the no-fault law registers one of the most dramatic success stories in the history of social legislation.

#### DEATH RATE DOWN, NOT UP

Insurance industry lobbyists in Puerto Rico claimed a no-fault law would cause automobile accidents to skyrocket because even those who negligently caused injuries and accidents would be entitled to benefits. The automobile accident and fatality rate went down, rather than skyrocketing upward. In 1969, for example, there were 541 automobile deaths in Puerto Rico. In 1970, the first year of operation of the plan, there were only 451 deaths.

One of the reasons for the fact that Puerto Rico became a safer place after the no-fault law went into operation, is that the government corporation which administers the law ("ACAA," pronounced "Aah-knh"—Administration de Compensaciones por Accidentes de Automoviles) operates an Accident Prevention Division. This Division, which launches safety campaigns, utilizing its statistics on the most common causes of accidents. It has launched one special safety campaign dealing with pedestrian safety and another campaign to orient school children, especially those in rural areas, about automobile accident prevention.

ACAA also cooperates with the local Highway Safety Commission in efforts to reduce automobile accidents on our roads.

The no-fault law may also help hold down fatalities and injuries by providing better medical care to all auto accident victims. Intensive care and a complete range of treatment by specialists are now available to all automobile accident victims. As ACAA pays for all hospital and medical benefits without limitation, the victim is now assured of the attention he needs. Before the new law, many victims simply could not finance their medical treatment and had to depend on public hospitals with inadequate facilities and staff for many types of automobile victims.

ACAA also helps to minimize the impact on the victim by utilizing trained social workers to advise and help automobile accident victims. Accident victims receive visits from ACAA's skilled social medical technologists. They brief the victim on their benefits and can help them with family problems resulting from the accident. These social medical technologists make weekly checks on the hospitals in their district.

#### LITIGATION DOWN, NOT UP

It was also argued that Puerto Rico's no-fault law would result in an upsurge of litigation. The opponents of no-fault argued that every accident victim would take his no-fault benefits and still sue. Under the law, tort recoveries are possible, but \$1,000 is deducted from any recovery for pain and suffering, and \$2,000 or the amount of no-fault benefits, whichever is greater, is deducted from any recovery for economic loss.



In practice, the no-fault plan has not encouraged litigation but has, in fact, discouraged it. One of the largest automobile insurers on the island indicated it did not have to pay a single liability claim for automobile accidents during the first year of operation. No-fault benefits, paid promptly fairly, and automatically, apparently satisfy a large proportion of all victims. The no-fault law of Puerto Rico pays all medical and hospital benefits, death benefits up to \$15,500 (which includes a \$500 funeral benefit), dismemberment benefits up to \$5,000, and disability benefits up to \$50 a week the first year and \$25 a week the second year.

#### EFFICIENCY OF SYSTEM UP, NOT DOWN

Critics of the Puerto Rican law initially argued that the universal payment of benefits by a government agency would be inefficient and slow at best, and lead to a bureaucratic breakdown of major proportions.

The fears of the critics were magnified when the newly elected Governor opposed the law and delayed the appointment of the Executive Director of ACAA until the end of July, 1969, only five months before the law was scheduled to go into operation.

Despite this foot-dragging, the plan went into operation promptly and efficiently. The first death claim was paid in a matter of hours, and by the end of the plan's first week of operation, 42 persons were receiving benefits. Now, if a claim is filed promptly, most benefits commence in about two weeks; and funeral benefits are paid in 48 hours.

During the first six months of operation, benefits were paid to 13,492 persons. By the end of the first year, that figure was up to 28,133. In 1970, ACAA paid or reserved \$3,465,747 for medical benefits; \$54,100 for dismemberment benefits; \$638,043 for disability, and \$1,811,596 for death benefits.

Expenses for the plan for the first year were about \$2 million, producing an expense ratio of only about 11 percent (this is \$11 of expenses for each \$100 of premiums).

#### BANKRUPTCY OR SURPLUS

Critics of the Puerto Rico no-fault law also claimed the new approach would bankrupt the island of Puerto Rico. Some insurance industry lobbyists claimed the plan would cost \$40 million a year, which would be enough to pay for the plan over five times in view of actual experience. The critics did persuade the legislature to raise the annual premium from \$25 to \$35 per registered vehicle.

ACAA collected about \$18 million for 1970 and incurred losses and expenses of approximately \$8 million. Thus a surplus of \$10 million was produced. With this kind of experience, the legislature could substantially raise benefits or lower premiums.

*El Mundo*, a leading newspaper in San Juan, Puerto Rico, editorialized on January 10, 1971: "Public agencies which operate with a substantial surplus are very rare."

#### THE PUERTO RICAN PRECEDENT

The no-fault law of Puerto Rico indicates that the "states" (Puerto Rico is a "state" within the meaning of H.R. 4994) can solve their automobile problem, and tailor the system that best suits their needs and circumstances.

Puerto Rico has worked out a solution to its problem without the need of Federal interference. H.R. 4994 would disrupt and interfere with this most successful automobile insurance plan in operation in any United States jurisdiction.

#### STATE OR FEDERAL SOLUTION

There is a clear and overwhelming consensus that no-fault is one of the most important solutions to the automobile insurance and reparations problem. The critical issue is whether there should be a Federal or state solution. Unfortunately, the March, 1971, report by Secretary of Transportation Volpe, entitled "Motor Vehicle Crash Losses and Their Compensation in the United States," gives us little or no help on the toughest question. Secretary Volpe merely says: "Experience with diverse plans in the states is essential and one state has already, this January, taken a step down the road. The states are the best arena in which to solve the problem." (p. 140)



## THE FEDERAL SYSTEM AS A LABORATORY IN SOCIAL INNOVATION

No-fault laws have come forth in profusion. There is a rich array of possibilities, and a state-by-state solution will permit trial and error, and needed experimentation and variation. We need not put all of our eggs in one basket, but can proceed to work toward the optimum system as each state goes its own way and develops new approaches and new mechanisms of compensation. The Federal system's flexibility should be utilized; it offers an ideal laboratory for social innovation and pioneering.

## THE NEED FOR STANDARDS

If experience with diverse plans in the states is essential, a Federal plan may be precluded but not Federal standards. Secretary Volpe, unfortunately, offers no enforceable standards and nothing more than a nice essay on the merits of no-fault legislation.

I would urge Congress to enact basic standards to which all states must comply. It is clear that the states, if left to their own devices, will lag behind the times in getting needed social insurance legislation on the books. The pitiful performance of the states in Workmen's Compensation is perhaps the premiere example of the legislative lag which has all too often characterized state action.

The Federal standards should not only set minimum requirements but should sweep away any state constitutional barriers to no-fault legislation. For example, in Pennsylvania, Article 3, Section 18 of our Constitution creates a substantial barrier in the way of no-fault legislation. That provision of the Pennsylvania Constitution states that "in no other cases (other than those within the purview of Workmen's Compensation) shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the General Assembly shall prescribe for whose benefits such action shall be prosecuted."

Whether minimum standards are to be adopted or whether the approach of the concurrent resolution is to be followed (H. Con. Res. 241), Congress should consider Federal legislation to pave the way for state no-fault action and to assert the supremacy of the Federal law in this area.

## THE FEDERAL SYSTEM AND THE DISPERSION OF POWER

Congress can force needed action on no-fault legislation and yet leave the checks and balances of our Federal systems unimpaired. There are overriding advantages to preserving state power which are typically appreciated in the abstract but often forgotten in practice. Governmental power cannot always be depended upon to perform in the public interest, as the history of both Federal and state governments indicate. The consumer interest may be protected for a time in one administration or other, subject to the whims of time and election results. An important guardian of the public interest is the dispersion of power between state and Federal government, so each can discipline the other and so both can compete to further the public interest.

We should seek to avoid undue concentration of political power and the Federal system does this through decentralization and dispersion of power between two levels of government.

Undisciplined power tends to become unresponsive at best and corrupt at worst, and one of the more effective ways of disciplining power is the split of power in a Federal system. This has been demonstrated most recently by the disciplining and salutary impact of Federal surveillance on state insurance regulation. This is creating better regulation than we might have if we consigned insurance to exclusively Federal control—which might go the way of the Interstate Commerce Commission, the Federal Trade Commission, and some of the other less celebrated Federal regulatory endeavors.

The states can prod the Federal government into action as well as the converse. The states initiated seat-belt legislation before Federal action was taken at the national level on this subject. Consumer oriented state administrations, such as that of Governor Shapp in Pennsylvania, are bound to help stimulate the Federal government toward a more pro-consumer policy in the years ahead.

The final result may be better for all if we have Federal government prodding state government, rather than a single source of power and authority in Washington.

## STATE POWER CLOSER TO PEOPLE

There are still other important advantages of state power. As trite as it may sound, state power is closer to the people. It is much easier, for example, to talk to a state Insurance Commissioner than a comparable member of the President's cabinet. A no-fault law, such as H.R. 4994, not only creates Federal auto accident law but also Federal insurance regulation.

The Federal government could annex yet another important state responsibility and enmesh it in its unreachable bureaucracy. Anyone who has spent time in Washington, knows that it is no figure of speech to talk of a Federal bureaucracy too far removed from the people. The Federal colossus may be too big and unwieldy already, a colossus which even the President cannot control. State power, in contrast, is more susceptible to direction and control by the Governor and the people of the state.

## PRESERVATION OF STATE INSURANCE REGULATION

State insurance regulation cannot be preserved if a Federal no-fault law transfers substantial insurance regulatory responsibility to Washington, D.C. This will mean not only a critical subtraction from state authority, but a split of responsibility which is likely to be disruptive and which is not likely to be viable.

H.R. 4994 would substantially destroy state regulation by such a transfer and division of responsibility. Section 5 of H.R. 4994 regulates the terms of the insurance contract, giving the Secretary of Transportation the power to approve the terms and conditions of the contract. That section provides the policy may contain "terms, conditions, exclusions and deductible clauses; consistent with the required provisions of such policy and approved by the Secretary, who shall only approve terms, conditions, exclusions, deductible clauses, coverages, and benefits which are fair and equitable, and which limit the variety of coverages available so as to give buyers of insurance opportunity to compare the cost of insuring with various insurers." Under Section 6, the Secretary of Transportation regulates the statistical plan, including policy provisions and classes of risk and rating territories, in order to accomplish the purposes of the statistical plan required by H.R. 4994. Under Section 6, the Secretary also appoints statistical agents. Under Section 7, the Secretary shall organize an assigned claims bureau and an assigned claims plan in each state.

H.R. 4994 should not destroy state insurance regulation in the name of automobile compensation reform. If this committee wants Federal insurance regulation, it should consider the full implications of that decision and not do so by indirection.

There are good reasons for preserving state insurance regulation, and such regulation is not inconsistent with sound and immediate automobile compensation reform.

There are other reasons for going with state-by-state no-fault plans that will not disrupt existing regulatory patterns. We know the strengths and weaknesses of state insurance regulation and we are now on our way to improving state regulation. Federal insurance regulation would represent an unknown adventure. As Dean Kimball of the University of Wisconsin Law School has pointed out: "Nothing is so unsure as prediction of the full range of consequences of a major change in a complex organic system."

## THE ISSUE OF COST

It has been argued that a state-by-state no-fault plan would be more costly than a Federal plan. Secretary Volpe was quoted in the press as saying: "I imagine the cost would be less if the same type of no-fault insurance were available throughout the country."

Secretary Volpe went on to say: "What I object to is Federal regulation of insurance." But this is more than a jurisdictional dispute. It goes to the heart of the preservation of our State-Federal system and of the liberties and freedoms that system helps protect and perpetrate. There are touchstones other than cost.

Even if cost were the only touchstone, it is still far from clear that a centralized, Federal bureaucracy can deliver the goods more efficiently than the states. There are efficiencies and economies in the dispersion and decentralization of power that are becoming more obvious each day. In terms of costs as well as other more important considerations, there are no impelling reasons for legislating a Federal take-over of no-fault laws and existing state authority.

## NEED FOR STATE-BY-STATE VARIATIONS

There are also good reasons for allowing differences in compensation plans to reflect the economic, political and social variations between jurisdictions. Income variations are the most obvious example. New York, with a per capita income of \$1,442, may need or want a different plan than Puerto Rico, with a per capita income of \$1,426, or Mississippi, with a per capita income of \$2,218.

## THE MIDDLE GROUND

I would urge you to create standards for the compensation of automobile accident victims without pre-empting or destroying state regulation of insurance. The purposes of H.R. 4994 are worthy, but it goes too far. The purposes of the concurrent resolution (H. Con. Res. 241) are also worthy but it does not go far enough. It merely makes the case for no-fault legislation and calls for action.

Somewhere between H.R. 4994 and H. Con. Res. 241, there is an appropriate middle ground which would require state action but not be destructive of the Federal system. Somewhere between H.R. 4994 and H. Con. Res. 241 there is a middle ground which will assure protection of the automobile accident victim but not destroy the protection of the balance of power between the state and Federal government.

Mr. Moss. Thank you.

Mr. Eckhardt?

Mr. ECKHARDT. Dr. Denenberg, you are neither for Federal supremacy, that is, a bill which would establish Federal standards and apply them, nor for a resolution which merely encourages action. You would favor a Federal act which sets out standards and which a State may comply with and come under the system: is that it?

Dr. DENENBERG. No. I would favor a Federal standard, but I would favor these standards to be so structured that they do not destroy State insurance regulation. In other words, I think the Federal Government can set up standards that each State would have to adhere to in terms of some basic principles of no-fault compensation for the automobile accident victim without taking over State insurance regulation.

Mr. ECKHARDT. Are you saying, then, you would leave to the State the regulation of rates and the matters which they now control in that general area, but that something like H.R. 4994 should establish the liability principles with respect to insurance?

Dr. DENENBERG. Right. I think it should do so in terms of general standards rather than getting into the act. H.R. 4994 actually makes the Secretary of Transportation the regulator of the insurance industry, and I think the State can do a better job in the long run. I am not a great advocate of State regulation, but I think Federal regulation is worse. I think State regulation has improved substantially, and I think it would be a mistake now to grievously injure State regulation when such is not necessary. I think there are broad areas of standards that can be laid down without interference with State operation itself.

Mr. ECKHARDT. Would you require Federal standards that required States to have no-fault insurance, or would you simply provide standards which required States to meet certain qualifications if they chose to substitute for tort liability in certain areas.

Dr. DENENBERG. No, I would not give the States the option. I think the States have failed in the area of social legislation. The example I give in my statement is workmen's compensation. Therefore, I would set up standards which would require the States to act.



Mr. ECKHARDT. Then what you would do, in effect, is to establish the provisions of H.R. 4994 with respect to no-fault insurance with respect to liability, but you simply would not provide the regulatory measures contained in that bill. You would adopt the liability provisions, but not the regulatory measures; is that correct?

Dr. DENENBERG. That would be one possibility.

Mr. ECKHARDT. Of course, I suppose that is about all you could do under your recommendation, because if you didn't give the States the option to do nothing or to adopt certain standards, it would be impossible to utilize the Federal standard approach. You would simply have to go in and legislate federally with respect to liability, would you not?

Dr. DENENBERG. Yes.

Mr. ECKHARDT. Do you think this can be done without some regulation or some power of regulation with respect to rates?

Dr. DENENBERG. I think it could be tried. I do think if there is power with respect to rates, again, it ought to be in terms of a standard rather than actually bringing the Secretary of Transportation into the act directly.

I have not really tried to develop all of the details of the standards that I would recommend, and I think there are an infinite number of variations. But I think it is clear the ones structured in H.R. 4994 go too far and, in effect, create Federal regulation or joint State-Federal regulation, which I think would be unsatisfactory.

Mr. ECKHARDT. Now, there is one area where there is a considerable difference between various acts and that is the area that relates to what triggers tort liability. In other words, what provisions in the act determine that area which is covered by no-fault and that area which may utilize existing tort liability? For instance, as I understand the Massachusetts act, any case in which medical expenses exceed \$500, and certain other requirements like, for instance, disfigurement, are cases in which tort liability is preserved.

I am not quite sure of that, though, and perhaps you are familiar with the Massachusetts act. The Massachusetts act, I think, refers to this triggering device leaving, in effect, pain and suffering as a factor for determining damages, and I am not sure whether a case falling below the \$500 absolutely denies tort liability or only denies it with respect to those factors. Do you know that?

Dr. DENENBERG. As I understand it, the Massachusetts law does not permit any actions for pain and suffering unless medical expenses exceed \$500 or unless these other triggering circumstances are there. But I think the tort liability still exists regardless.

Puerto Rico has an entirely different approach. They preserve tort liability if pain and suffering exceeds \$1,000 or if other economic losses exceed \$2,000. I am sure that of all of the approaches, the Massachusetts is one of the least satisfactory.

Certainly, all you have to do today is look at a doctor cross-eyed and he can come up with a \$500 medical bill, and that may even encourage people to do that, especially the way medical costs are going now. They are so out of control that everybody is going to be allowed to sue for pain and suffering before long in the Bay State, I am afraid.

Mr. ECKHARDT. You say in Puerto Rico it is somewhat different. It seems to me as you described the Puerto Rico law, there is a no-fault



liability up to a certain level but anything over that level would permit an ordinary tort suit.

Dr. DENENBERG. In other words, you take your no-fault benefits, which include unlimited medical expenses, death benefits up to \$15,500 disability and dismemberment benefits; and if your pain and suffering exceeds \$1,000 and your economic losses exceed \$2,000, then you can still sue and those——

Mr. ECKHARDT. You are not denying tort liability if the total damage exceeds that measured by any kind of economic loss or any kind of pain and suffering; is that right?

Dr. DENENBERG. Right. I think one possibility is to allow a tort action in any case unless pain and suffering is less than a given amount. It may be even \$5,000. In other words, eliminate the pain and suffering in the smaller cases and preserve pain and suffering and the tort right only in the more substantial cases. I think that is one approach which seems to me to make sense.

Mr. ECKHARDT. But are you going to try to recover where the act falls under the tort situation or under the no-fault situation?

Dr. DENENBERG. I think you can do it as they do in Puerto Rico. If you think you can prove your case, you go to court. I don't think people would be running into court with cases that don't hold up. If you stub your toe, I don't think you are going to try to prove you have \$5,000 in pain and suffering.

I think these limitations would be put into the law to eliminate the less important cases, the cases where you don't need the remedy. In those catastrophe situations where only the liability remedy and only the pain and suffering remedy can fully compensate the victim, such remedy should be preserved.

Mr. ECKHARDT. Now, with respect to tort suits, H.R. 4994 is the strictest of all, as I read it, because it absolutely denies tort liability unless permanent-partial disability exceeds 70 percent. So since its limits of recovery are \$36,000 and, I believe, 36 months, it would appear to me that H.R. 4994 doesn't give any area for recovery of permanent-partial disability beyond the \$36,000 and up to 70 percent permanent-partial disability. What do you think about that?

Dr. DENENBERG. I think they go too far in cutting off the tort remedy. You have to strike a balance between economy and justice, and I think they go too close to the economy and not close enough to justice on that. I think they are too strict in cutting off the tort remedy, and the tort remedy should be reserved in many areas in which H.R. 4994 would cut it off.

Mr. ECKHARDT. Now, suppose we do follow the general course that you are suggesting—or perhaps I don't understand the course, and that is the reason I pose this question—suppose we do follow the course of providing for no-fault liability, but we simply leave to the States many of the details of the question. Suppose one State adopts the Puerto Rico system, which, as I understand, would permit you to come in and permit you to bring a suit after you have collected the no-fault payments, assuming your case exceeds the amount collectible.

Suppose another State, say Massachusetts for instance, retains its provision for cutting off pain and suffering in cases under \$500 of medical treatment, and suppose, let us say, Texas adopts H.R. 4994, or provisions like it, which require 70-percent disability in order to go into

a tort case, do you see any difficulties involved in a situation in which various States have various standards with respect to tort liability with the mobility of motor vehicles and, also, with the present system of purchasing insurance in various areas in which the law respecting those insurance policies may differ?

Dr. DENENBERG. I think it might in many ways be more efficient to have a single system, but I think that these difficulties can be overcome. We have many of these variations now between the policy requirements of one State and another State, between the law of one State and another State.

You could also set up the law in your State so that the no-fault benefits would be paid to your citizens, regardless of where the accident occurred, and many of the no-fault laws do this. I think these things may create difficulties, but I see no reason why they can't be overcome.

Mr. ECKHARDT. One way to overcome them—and I assume that would be within the scope of your testimony—is, with respect to these types of standards that have to do with liability itself and do not have to do with insurance premium regulation, simply to provide a single Federal standard.

Would you advocate that, or would you advocate separate standards, as I have described here as the possibility?

Dr. DENENBERG. I think you could come up with a significant acceptable Federal standard.

Mr. ECKHARDT. Would you prefer that, or would you prefer the other?

Dr. DENENBERG. I would really have to see it before I would buy it, but it is conceivable to me that you could go either way on this, or you could leave the State some degree of flexibility. I think that would be important advantages to a single Federal no-fault standard.

Mr. ECKHARDT. What do you think about including property damages as well as personal injury?

Dr. DENENBERG. I don't think that is going to make a significant difference. I am relatively indifferent to property damage. I suppose you could tidy it up if you made everyone insure their own property damage or assume their own responsibility for their property damage.

Mr. ECKHARDT. Well, we have testimony here that approximately half of the pay-outs are on property damage, and I think the facts will show that ultimately that constitutes more than that on payouts on property damage.

Dr. DENENBERG. I think the most important thing there is not changing the insurance system, but to make Detroit build decent cars. Detroit has been negligent in building automobiles that are unsafe and highly damageable, and I think that is where fantastic strides can be made.

In a sense we have no-fault already because of the fact that most people carry comprehensive and collision coverage. I don't think the no-fault system is going to change that, although it could stop some of the intercompany money shuffling that goes on now.

Mr. ECKHART. What would you think of making the no-fault insurance compulsory, since it generally exists anyway, and requiring the automobile manufacturer to purchase and sell with the car 1-year property coverage, the premiums to the manufacturer being determined by the questions of safety and cost of repair?

Dr. DENENBERG. We have advocated in Pennsylvania, and we have even told the companies already, that in the future we want them to come in with rates that reflect safety and damageability. I think that would be a better move. I would not trust the automobile industry to do anything, and I would certainly not trust them to get into the insurance business. I think maybe they ought to learn how to build automobiles before they venture forth into other areas. We found that General Motors talks one way when it is building cars and another way when it is insuring automobiles, and it hesitates to insure some of the automobiles it builds.

So I think if you really want to do something in the property damage areas, I would go after General Motors and its little brothers in Detroit more vigorously.

Mr. ECKHARDT. Thank you.

Mr. MOSS. Mr. Ware?

Mr. WARE. One thought occurs to me, and that is the study of the Department of Transportation, and it seemed to me it provided some historical and factual information. Maybe you have the information available.

Dr. DENENBERG. I would have to agree this is an excellent study, because I did one of the volumes of it.

Mr. WARE. That is what I was going to lead to. I am certain you are aware that H.R. 7514 has been introduced as well as H.R. 4994. I don't know whether you have a copy of it.

Dr. DENENBERG. I think they told me to concentrate on H.R. 4994, so I tried to keep my mind clear. Everybody has their own plan, and it is hard to keep them separate.

What I was trying to say in my statement, though, is that the approach of the Nixon administration is totally worthless. It simply presents an essay on the benefits of no-fault and nothing else. I don't think that is going to accomplish anything. If that is all that the Nixon administration was going to do, then \$2 million was too much to spend for Mr. Volpe's essay.

Mr. WARE. Do you have any information as to how the medical expenses in Puerto Rico compare with, say, the Commonwealth of Pennsylvania?

Dr. DENENBERG. Well, the cost levels are quite a bit different between Puerto Rico and Pennsylvania. The premium for the protection in Puerto Rico is \$35, and you receive your medical benefits by going to anyone under contract with ACAA. They made contracts with almost everyone, so you can get benefits from anyone. In the case of emergency, there are no limitations at all.

I would not know the precise differences, although I am certain that the costs are lower in Puerto Rico than they are in Pennsylvania.

Mr. WARE. The evidence shows they may be.

I think you referred to the income per capita in Puerto Rico and in New York State, for example. Would you say that other factors compared between Puerto Rico and other States such as the passenger per mile travel or ton per mile mileage, density of traffic, would be significant?

Dr. DENENBERG. In most respects, Puerto Rico is really worse than the United States. They have the world's lousiest roads and world's lousiest drivers. They tend to have very old automobiles because of



the tax situation. Many people said that the Saskatchewan experience meant little because it was so sparsely populated. So we thought that Puerto Rico was a good place to test no-fault. It is densely populated. They have serious traffic problems and older automobiles. Approximately 75 percent of the people were uninsured there. It also makes a great place for people to go to study the plan; much better than going to Canada.

Mr. WARE. Especially in February.

Dr. DENENBERG. I was always there in August, so I really couldn't speak to that advantage.

Mr. WARE. I gather Puerto Rico is comparable to the Schuylkill Expressway.

Dr. DENENBERG. Nothing is as bad as the Schuylkill.

Mr. WARE. You referred to the Pennsylvania constitution and it might pose a problem with respect to no-fault insurance. I suppose that could occur in other States as well, but that could be overcome by an amendment to the constitution, if necessary, could it not?

Dr. DENENBERG. That is a slow process in Pennsylvania, as in other States. I think it would do a great service to Pennsylvania and States in the same situation by Federal action which would assert supremacy over any of these constitutional provisions. I don't think other States have as serious a problem as Pennsylvania.

Mr. WARE. That was my next question. With some Federal legislation, you could overcome that deficiency, could you not?

Dr. DENENBERG. Right.

Mr. WARE. I think that is all I have, Mr. Chairman.

Mr. MOSS. Mr. McCollister?

Mr. MCCOLLISTER. Mr. Denenberg, it would never be said that you are a wishy-washy witness.

Dr. DENENBERG. Thank you.

Mr. MCCOLLISTER. Returning to the line of questioning that Mr. Eckhardt began related to the standards, it seems to me that your very excellent argument on the dispersal of power and the resulting diversity of innovative processes that could come as a result of having some measure of State responsibility depends on what we are talking about when it comes to standards.

I don't feel that we have been able to tie down very well even generally what you refer to when you refer to Federal standards to which States should adhere. Could you elaborate more on that and could you give me some specifics on this general subject?

Dr. DENENBERG. Well, I think one standard could really require State no-fault laws. They could require every victim of an automobile accident to receive medical expenses, disability benefits, and death benefits. That would be the kind of standard I had in mind.

Mr. MCCOLLISTER. And you also suggested the threshold at which tort liability applies?

Dr. DENENBERG. Right. That would be a possibility. I have no problem with that.

Mr. MCCOLLISTER. Are you aware of any other experts in the field who would have suggested standards that might apply federally?

Dr. DENENBERG. Well, I think you could take any discussion of no-fault and really extract the standards out of them. I really think, it would seem to me, it would be a fairly easy matter.



Mr. McCOLLISTER. Other witnesses who have appeared here on previous days suggest that State involvement, State latitude in any way, will create a hodgepodge of confusion on what applies.

I am much attracted to your argument that we need the State diversity and the State responsibility here within the limits of Federal standards. Could you elaborate a little bit more on how State action would not cause difficulty when a resident of Nebraska goes across the river into Iowa?

Dr. DENENBERG. Being from Omaha, I can speak with great authority on that question. Nebraska could provide that the no-fault benefits would be payable to its insureds regardless of where the accident happened, and many of the bills do this. He would still have to carry liability coverage to protect him against the suits of those who were not in the same position, but there is no reason why you can't do that.

You can get a liability policy to protect you against the problems of liability law in different States. Some companies even include a policy provision which automatically increases the financial responsibility limits, as you go from one State to another with different liability limits. I think the federal system adjusts to these differences very nicely.

Incidentally, one thing that no-fault will do is put a lot of lawyers out of business. So they can figure out the problems of Federal diversity. It will give them another occupation, I guess.

Mr. McCOLLISTER. If some of these questions were included as part of the Federal standard, would it not obviate the need for this supplemental liability coverage?

Dr. DENENBERG. You could create standards that were rigorous enough to largely eliminate this difference.

Mr. McCOLLISTER. In your view, is this desirable?

Dr. DENENBERG. I think it might be. I would have no objection to that, and I think it might be desirable to have a single Federal standard, although I would see no great difficulty in letting each State go its own way either.

I spent a lot of my time as insurance commissioner trying to figure out what States are doing things better than Pennsylvania. I learned a lot, and I think there are great merits to diversity.

A single system would lock you into something which may not be as satisfactory, and you can learn and experiment with State-by-State variations. I really believe that the Federal system is a great laboratory in social pioneering and innovation and engineering, and we ought to utilize it, perhaps, for that purpose.

Mr. McCOLLISTER. I got that impression. Thank you.

Mr. Moss. Before recognizing counsel, I would like to invite one of our colleagues. Congressman Cotter of Connecticut to join us here at the committee table. Congressman Cotter is prominently identified with this field of insurance activity. He is a former insurance commissioner of the State of Connecticut. We are happy that you are here and interested in what we are doing. I know we will, as we move along, be interested in your views and your recommendations.

Mr. COTTER. Thank you very much, Mr. Chairman.

Mr. Moss. Mr. Guthrie?

Mr. GUTHRIE. Dr. Denenberg, in discussing this need for diversity, it seems to me you have a problem. You point to the pitiful performance in State workmen's compensation law. In fact, under the Occupational Health and Safety Act of 1970 a national commission on State workmen's compensation law was established. It is my understanding that one of the problems that they are going to address themselves to is the hodgepodge of State workmen's compensation law.

Now, if this diversity is permitted, aren't you possibly going to have the same problem in auto insurance?

Dr. DENENBERG. I don't think the problem in workmen's compensation is that there is a hodgepodge. I think the problem is that there may be 40 or 45 lousy laws.

I think each State could go its own way and you could have a viable system.

Mr. GUTHRIE. But in workmen's compensation you have a fairly static, stable person, but in automobile insurance you have people traveling throughout the United States.

Dr. DENENBERG. Well, in compensation you have a lot of people in transit, too, going from State to State, and that problem can be solved. I don't think that is really the basic problem with compensation. I agree the States have done a miserable job in compensation. Pennsylvania has been almost as bad as Mississippi and Alabama, which are noted for having the lousiest laws.

I think this problem can be solved, too, by the Federal Government coming up with standards, and I think it has been negligent in not doing so. The Federal Government moves very slowly.

Mr. GUTHRIE. Well, turning to the capability of various States to regulate this matter, you talk on page 14 of the weaknesses of State regulation and of the fact that we are now on our way to improving State regulation. I note in your study with Dean Kimball that you don't have too high a regard for State commissioners and regulators.

Dr. DENENBERG. That was before I became commissioner, though. Let the record show that.

Mr. GUTHRIE. I appreciate that. In what respects do you think they are improving, in addition to your having become the State insurance commissioner?

Dr. DENENBERG. Isn't that enough for you right there?

Mr. GUTHRIE. This is only one State.

Dr. DENENBERG. I could cite Mr. Cotter as another example. I knew him when he was a mere insurance commissioner. I think the States are upgrading their regulation. I think one reason it is being upgraded is that it has become a very sensitive issue. The insurance commissioner used to be a little man who was thought to be totally incompetent to run a department.

Now it's entirely different. I got hit with many crises and problems the first month I was in office. And you are being hit all of the time by tremendous problems, and I know the Governor of the State appreciates that. As a result, they are upgrading the office of insurance commissioner.

Legislators have been very disturbed about insurance. They were more disturbed than the consumers. They get canceled, nonrenewed and overcharged like everyone else. So there is a general feeling we have to do something better.

MR. GUTHRIE. You say you have to do better, but what steps are being taken? Now, Senator Steers of Maryland, the former insurance commissioner, said the other day he has about three people in the Maryland Insurance Department upon whom he could rely on for assistance and ratemaking. Are you staffing up and are the other States staffing up?

DR. DENENBERG. Of course, it has been well recognized that the world is short of competent people and there aren't enough competent people to go around for other jobs. I think there has been an upgrading. I have 250 people, and I am looking for more good ones now. I think this is taking place all over. The National Association of Insurance Commissioners was once a total farce, and now they are gearing up with research capabilities.

I think we should upgrade our State legislatures. They don't have the staff. When I come down to Washington, I know a Senator who has 80 people down here turning out ideas for him, whereas back in the State the guy may be lucky to have a secretary.

But I think these problems are being solved, and they are certainly being solved in Pennsylvania. We have a new Governor who is very consumer oriented, and I predict he will do great things.

MR. GUTHRIE. Mr. Eckhardt discussed the matter of triggering tort remedies, and you said the 70-percent triggering mechanism was needlessly high.

Do you have a suggestion as to where it might properly be or what other device might be used?

DR. DENENBERG. I kind of like the notion that if your pain and suffering exceeds a given amount, such as \$5,000 or \$10,000, or if your economic loss exceeds a given amount, that that kind of breaking point be used.

This has been used in Puerto Rico. It is part of the Keeton-O'Connell proposal. That would be my own preference. I am certain you could perhaps modify H.R. 4994 downward so it wouldn't be as restrictive as it is now. That would be another approach.

MR. GUTHRIE. I have no further questions, Mr. Chairman.

MR. MOSS. Are there further questions?

MR. ECKHARDT. I have just one, Mr. Chairman.

I am still troubled with your use of the term "standards," because it is easy to apply a standard—for instance, a Federal standard—say, of industry safety, because if it isn't met the Federal standard goes into effect. It is easier to apply that sort of a device to questions of air or water pollution, because if the standard isn't used the Federal rule goes into effect.

But it seems to me you are not really talking about standards here. You are talking about Federal law of liability. Because we either have to be in the tort system, the existing system in the State, or we have to be in some other State system.

DR. DENENBERG. I think you could say that the State law has to come up to this level or something else would happen, like automobiles could not go on the road, or there would be some kind of an analogy to the welfare system, a tax.

I don't see where the Federal laws cannot require certain types of State legislative action like that, and this would have to be met.



Mr. ECKHARDT. Well, what would happen if the Federal Government set up a standard of no-fault liability generally, a first-party claims system, provisions with respect to payment of medical, certain limitations, certain triggering devices for tort actions, and then suppose a State didn't meet that standard. Suppose it adopted lesser standards. What would happen under the type of system that you propose?

Dr. DENENBERG. Well, I guess the same thing that would happen under H.R. 4994.

Mr. ECKHARDT. Well, are you saying, then, that the Federal standard would be ineffective in the States which did not meet the Federal standard?

Dr. DENENBERG. Well, as I understand it, under H.R. 4994 the States have to take these actions or they can't license automobiles for travel on the road. In other words, I don't see any difficulty in making the States come up to those standards.

Mr. ECKHARDT. Well, the thing is that H.R. 4994 simply provides for no-fault liability, and then provides that an automobile may not be used unless it meets those standards. This is a typical Federal-type law with the Federal act going into effect immediately. But if you set up standards in a Federal law and the State doesn't meet them, is it your view then that the Federal-law standards would immediately go into effect in that State, or would there be no regulation in that State?

Dr. DENENBERG. Well, it would seem to me that the States——

Mr. ECKHARDT. Or just no cars driven?

Dr. DENENBERG. I think that might be a good move, too. I would have no problem with that.

Mr. ECKHARDT. It would be difficult having motorists, because the States wouldn't pass the standards, lock their cars in their garages. Suppose they don't?

Dr. DENENBERG. Then I suppose you could have the backup Federal standards if you really think that this was a possibility, or you could take some other step.

Mr. ECKHARDT. Well, I have seen a situation in which a State has failed to adopt any kind of industrial safety standards over a period of 30 years after certain other States were quite well advanced. So I certainly have no sanguine view of the States complying unless there is some means of making them comply.

Dr. DENENBERG. I suppose another possibility is a tax. I worked on a DOT advisory committee which was concerned with the problem of State solvency funds. There it was suggested that the States create the solvency funds or they would subject their citizens to some extra tax. I suppose there is one possibility. If they would fail to comply, the State would be required to pay a tax, which would force State action.

Mr. ECKHARDT. Then you would run into a conflict of State laws, and you would have a tremendous hodgepodge of regulation, it would seem to me.

Dr. DENENBERG. I am confident this could be devised so the States could act. It seems to me that Congress can be ingenious enough to come up with the kind of pressures that are needed to make the States act.



MR. ECKHARDT. I am confident that this is true, too. The carrot and stick method has been pretty good in the past, but in most of those instances you are dealing with a matter in which would ultimately afford an additional service. Here what you are doing is making a drastic change in basic tort law, basic liability law. It seems to me there is much more of a problem here unless there is some Federal law of liability.

DR. DENENBERG. Well, in a sense you are really giving the people something. When you go from the present system, which is almost worthless to a system where people will be paid, I think that is an important contribution to their welfare, and it seems to me this is the kind that would be acceptable and enthusiastically received by the people of a State. You are really doing them a favor when you get them off this kick we are now on, which is a complete waste, and give them a benefit that is meaningful.

MR. ECKHARDT. It depends on what kind of benefit you give them: doesn't it? For instance, I know some workmen's compensation laws that are, perhaps, worse than ordinary tort liability. You mentioned two States in which, I think, there would be a pretty good argument that no law at all would be better. So you are assuming that a good no-fault is to be passed. Suppose one is passed that merely cuts out most partial-permanent liability. That is no benefit to people is it?

DR. DENENBERG. Well, I think it challenges the imagination to come up with a law that is worse than we have now. I said a monkey with a typewriter could peck up a better system than we have, but I think my type of minimal standard would give you a better law than we have now.

In Puerto Rico you would be better off getting knocked off than any place in the United States, even with their low level of income. And with that modest plan desired for a no-income economy, I think you are better off getting killed in Puerto Rico than in the United States, which is a sad commentary on the system.

MR. ECKHARDT. You may be correct about your assumption, but I still think we should write the best kind of law we can write that doesn't leave out vast areas in which people may receive very substantial permanent-partial disability with a limitation that doesn't take into account pain and suffering.

DR. DENENBERG. I agree, and I think the standard should cover those eventualities so they are guaranteed some basic benefits. I agree with you fully.

MR. ECKHARDT. Thank you.

MR. MOSS. Any further questions?

Hearing none, I want to thank you very much for appearing here. I think your testimony has been very helpful to the committee.

DR. DENENBERG. Thank you very much.

MR. MOSS. Our next witness is Mr. Frederick D. Watkins, president of the Aetna Insurance Co., of Hartford, Conn.

Following the testimony of Mr. Watkins, he has a new film prepared by Aetna, which counsel has viewed and feels would be very helpful to the committee. If there is no objection, following the testimony we will then see the film. The film will take 24 minutes.

Is there objection?

We will then, after the film and the statement, undertake to question Mr. Watkins.

## STATEMENT OF FREDERICK D. WATKINS, PRESIDENT, AETNA INSURANCE CO.

Mr. WATKINS. Thank you, Mr. Chairman, I submitted to you a written statement. I am excerpting it in my spoken remarks this morning, if that is agreeable to you, sir.

Mr. Moss. What you would like to have is the statement placed in the record in its entirety and then summarize?

Mr. WATKINS. Yes, sir.

Mr. Moss. Without objection, it is so ordered.

Mr. WATKINS. For further identification, let me say that my company, the Aetna Insurance Co., located in Hartford, Conn., is a property and casualty affiliate of Connecticut General Life Insurance Co. Approximately 25 percent of Aetna's business, as measured by premium volume, is automobile insurance and, I might add, is the line of business that has contributed most significantly to our underwriting losses of the past several years.

Auto insurance today is sorely in need of reform, as this committee knows. But the failure of the present system and the need for reform are not the critical issues at these hearings. They are the point from which we begin.

I would like, therefore, to restrict my comments today to what I consider central questions before this committee: First, what type of reform should be enacted and whether it should be a matter for State or Federal initiative.

As the chairman has indicated, I would like to offer you the opportunity to see a film, produced by Aetna, dealing with auto insurance reform, and specifically reform based on a first-party, compensatory principle generally referred to as "no-fault."

On the question of reform, my own company's position is clear. Aetna endorses those plans that would introduce the no-fault concept of auto insurance in either a "pure" or modified form. We believe that the responsibility for this reform lies with the State governments.

Over 5 years ago, Aetna publicly endorsed a first-party compensatory system of auto insurance, patterned after workmen's compensation, to replace the existing tort system. Our belief then, and now, is that the present system effectively restricts our ability to serve the public and protect the accident victim. For this reason, we advocate paying an individual benefits on the basis of his economic losses, rather than on the basis of his fault or nonfault in an accident.

Most of the proposals being considered in the States and at the Federal level are based on this no-fault principle. I am sure you are familiar with this concept, so I will skip other descriptions of it at this time. The concept has obvious merits, but there is no universal agreement on the advisability of no-fault. Many opponents are particularly dismayed by no-fault's renunciation—either total or partial, depending on the plan—of the common law concept of fault in accident cases.

I would like to read you part of what I consider to be a persuasive answer to these critics:

In the days of manual labor . . . and the stagecoach, there was no such problem, or if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few. There was no army of injured and dying, with constantly swelling ranks marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the

wonderful material progress of our age, and this is what we shall have with us for many a day to come. Legislate as we may in line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our greatness will still have to be paid in human blood and tears. To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subject, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

This passage, by the way, was written by Judge Winslow in *Borgnis v. Falk Co.*, a case heard by the Wisconsin Supreme Court in 1911. The case was a landmark decision dealing with workmen's compensation. Its application to our situation today is obvious.

The insurance industry does not present a unified front either for or against no-fault, as you know. Some segments of the industry, including some insurance companies, are very outspoken against a first-party system. Other companies, including my own, have fully endorsed the concept.

The result is some degree of confusion. In Massachusetts, for example, when a modified no-fault plan was enacted by the State legislature last year, most people—including the press—believed the insurance industry was against the reform. This was not the case at all. The dispute in that State was related entirely to rate considerations of coverages unconnected with no-fault coverage.

I believe, and my company and its affiliates believe, that by establishing the right priorities for the insurance system, no-fault reform would ultimately improve the situation not only of the public but the insurance industry. Today, sharp fluctuations in losses make the insurer's position too precarious to tolerate premium levels based on narrow or non-existent profit margins and require the application of long-range trend factors in the pricing computation.

Under a first-party system, however, we would be able to predict losses with greater degree of accuracy. Thus, we would be in a better position to develop adequate rates based on moderate but realistic profit margins, avoiding the violent swings that have characterized our business for the past 10 years. I personally believe that a no-fault system would have a favorable impact on the current crisis of insurance availability, as well.

I feel certain that a no-fault system would lead to expansion of the automobile insurance market. Underwriting standards would be significantly changed. An individual's driving record would still be significant, but so would his income, the size of his family, the kind of car he drives.

There are predictable factors, with assignable values. In short, insurers would be able to figure more accurately the costs of the risk they assume and, in a free and competitive marketplace, would be able to offer coverage to virtually all licensed drivers in accordance with their needs.

In summary, both from the point of view of the public and the insurance industry, no-fault would be meaningful reform. I strongly believe this. I also believe that no-fault would be best implemented at the State level by the State governments, and I hold this view for several reasons.



First, in developing the no-fault plan that will be most effective in practice, we can learn much from the natural process of experimentation that occurs among the various States. While the no-fault concept itself may be a rallying point for most reformers, there is no consensus of the best type of plan. Before the public, the insurers, and the legislators can reasonably determine the relative merits of each plan, we need to experiment, and this is most appropriately carried out at the State level.

Secondly, the State governments are closer and potentially more responsive to the particular needs of their constituencies and, in the matter of automobile insurance, these needs may vary considerably. Cost of living, particularly medical care costs, often differ greatly from State to State—contrast New York State and Mississippi.

Thirdly, the experience developed by the States in their traditional role as regulators of insurance—including the immediate availability of professional staffs knowledgeable in insurance—could be put to good use in dealing with reform at the State level.

Despite my strong preference for State rather than Federal action, I want to make it clear that I am neither dismayed nor frightened in any way by the interest being given to auto insurance reform by the Federal Government. On the contrary, I am encouraged by it. I am encouraged because it brings the urgency of reform into sharper focus. The activities of this committee, its counterpart in the Senate, and the Department of Transportation, all provide not only direction for the States but incentive for them to act positively and without delay.

Most importantly, Federal attention to the problem serves to alert the public and this is crucial: Ultimately public pressure will stir even the most recalcitrant State legislature to action.

You will be interested in some recent events in Connecticut, which illustrate this point. Our Connecticut Legislature is considering no-fault for the second time this year. The first time was 2 years ago when my good friend and colleague, Bill Cotter, then insurance commissioner and now our Representative from the First Congressional District, sponsored an unsuccessful drive to have a no-fault plan adopted.

This year, however, reformers were more optimistic. The major no-fault bill under consideration by the legislature introduced by State Senator Lieberman of New Haven has the backing of the State labor council and a large portion of the local insurance industry. In addition, the press has been very forthright in its support of no-fault.

The legislative committees' unanimous decision, however, reached just over 2 weeks ago, was to appoint a study commission to report back to the legislature next year. This was a blow to those of us who considered prompt action to be imperative, but we were realistic enough to practically view the matter as closed.

Now it appears that we underestimated the enthusiasm for reform. Editorials in the past 2 weeks, for example, have been very critical of the postponement action and, as a result, today there is reason for some optimism. In fact, at 11:30 this morning in Connecticut, State Senator Joseph Lieberman is holding a press conference to announce that he has successfully garnered enough Senate votes to petition his no-fault bill out of committee and onto the floor of the Senate. So we may have a new ball game there.



Just a week ago, Capitol experts were saying such an achievement would be a miracle. Today we have that miracle. It is to the credit of Senator Lieberman and his own tenacity in fighting for reform. It is also evidence of the timeliness of the no-fault issue itself. Although the outcome of critical votes in both houses of the legislature still remains to be seen, at least for the time being no-fault is alive again in Connecticut.

I am convinced that public pressure for reform is the most powerful force behind no-fault automobile insurance. This is suggested not only by events in Connecticut but by various studies which show that an informed public is overwhelmingly in favor of no-fault as an alternative to the present automobile liability insurance system.

An informed public will support no-fault. But a public that does not understand the issues is a hindrance to reform. Results of a Gallup poll published just last week dramatically illustrate the need for better public information. For the benefit of the members of this committee, I would like to submit the findings of this poll for your records. They are attached to my testimony.

In summary, these findings were as follows: Of the people interviewed by the poll, conducted on April 3 and 4, only 19 percent understood the basic features of no-fault. Of this 19 percent, however, support for no-fault was 4 to 1.

Clearly, it is extremely important that public concern be activated. I hope that our film, which we will see in a minute, will contribute to this goal. I might point out that included in this film are several key national figures who represent a range of views. Not all of them favor no-fault. But our purpose in the film is to educate: To clarify the issue and to reduce some of the misunderstanding that surrounds the no-fault concept.

I am confident that these hearings and those of the Senate committee will also help to serve this purpose of public education. Beyond this, I would like to see this committee give its endorsement to the House Concurrent Resolution 241 and the recommendations of the Department of Transportation, thus recognizing that the overall public interest would be best served by implementation of no-fault reform at the State level.

Mr. Chairman, with your permission, may we turn out the lights?

Mr. Moss. Just one moment. You have an item to be included in the record. Is there objection to it being included in the record at this point?

If not, the matter will be placed in the record immediately following the statement.

(Mr. Watkins' prepared statement and attachment follow:)

#### STATEMENT OF FREDERICK D. WATKINS, PRESIDENT, AETNA INSURANCE CO.

My name is Fred Watkins. I am President at Aetna Insurance Company, which is located in Hartford, Connecticut. My company is the property and casualty affiliate of Connecticut General Life Insurance Company. Approximately 25 percent of Aetna's business, as measured by premium volume, is automobile insurance.

Automobile insurance today is sorely in need of reform. The consumer knows it when he pays his premium or when he tries to get coverage in constricted markets. The accident victim knows it when he seeks to recover his accident losses and finds his compensation grossly inadequate, unfair, and slow. Insurance companies know it when they see their losses mounting and their ability to serve their customers diminishing.

This committee also knows that reform is needed. In the relatively short duration of these hearings, the Members of the Committee have heard testimony from a variety of witnesses with a great deal of cumulative knowledge about the present automobile liability insurance system and the way it works. Whatever their own interests and proposals for remedy, these individuals agree that the system is failing.

If the automobile were a luxury owned by a few, perhaps we could afford to be more tolerant of the way the tort liability system works—or doesn't work. But this is not the case. The automobile is an economic necessity for many individuals; and by virtue of public opinion, court decisions, and compulsory insurance statutes, the automobile is also a social instrument. Thus it becomes a social responsibility to take action toward reforming the system.

The failure of the present system and the need for reform are not the critical issues at these hearings, however, but the point from which we begin. I would like therefore to restrict my comments today to what I consider central questions before this Committee: What type of reform should be enacted and whether it should be a matter for State or Federal initiative.

Following my statement, I would like to offer the Members of the Committee the opportunity to see a film dealing with automobile insurance reform, and specifically reform based on a first-party compensatory principle—the "no-fault" principle. The film, which Aetna Insurance Company produced, includes a number of key spokesmen who represent a range of views on the subject. Not all of them favor no-fault, as you will see. But our purpose in the film is primarily to educate: to clarify the issues and, at the same time, to reduce some of the public confusion which surrounds the no-fault concept. Because it presents an overview of the reform question, I think that it will also be of interest to you.

What shape should reform take and how should it be implemented? My own company's position is clear. Aetna endorses those plans that would introduce the no-fault concept of automobile insurance in either a "pure" or a modified form. We believe that the primary responsibility for this reform lies with the governments of the individual states. Thus we support House Concurrent Resolution 241, introduced by Representative Staggers of West Virginia, which incorporates the recommendations of the Department of Transportation for state action guided by national goals.

Our approach is a pragmatic one that we believe is warranted both by the present situation and by the potential advantages of no-fault reform initiated at the state level. Let me elaborate.

Over five years ago Aetna Insurance Company publicly endorsed a first-party, compensatory system of automobile insurance, patterned after workmen's compensation, to replace the existing tort liability system. It was our belief then, as it is now, that the majority of ills associated with the present system revolve around the necessity of determining fault, case by case, in millions of traffic accidents each year. At best the process is too expensive, takes too long involves too great a distortion of justice, and obscures what should be our primary concern for the injured accident victim.

The present liability system of automobile insurance effectively restricts our ability to serve the public and protect the accident victim. For this reason we advocate reform that would enable us, insurers, to pay an individual benefits on the basis of his economic losses rather than on the basis of his fault or non-fault in an accident.

Most of the proposals being considered in the states and at the Federal level are based on this "no-fault" principle. This includes the most prominent plans developed by Professors Keeton and O'Connell, the American Insurance Association, the New York State Department of Insurance, and Senator Hart of Michigan—whose proposal has been introduced in the House by Representative Moss of this Committee—and most recently the recommendation of the Department of Transportation.

As far as the basic insurance concepts are concerned, these proposals and their numerous derivations differ more in degree and in detail than in substance. All would provide for first-party benefits to accident victims, regardless of fault, covering medical and rehabilitation costs, wage loss, and miscellaneous expenses. The compensation would be paid promptly on a periodic basis. To the extent that losses could be recovered on a non-fault basis (under some of the plans there are limits established) individuals in an accident would not be permitted to sue each other.

The concept has obvious merits. Most importantly it would compensate all accident victims promptly according to their actual economic losses. Secondly by eliminating much of the legal and investigative costs of the present system, it would reduce rates for the consumer and return a greater percentage of the premium dollar to the accident victim. No-fault would also encourage a more balanced approach to traffic safety, by restoring the proper roles of the insurance system and law enforcement bodies in dealing with criminal drivers.

There is no universal agreement on the merits of no-fault, however. In some quarters the opposition is quite vocal. Many of these opponents are particularly dismayed by no-fault's renunciation (either total or partial depending on the plan) of the common-law concept of fault in accident cases. I would like to read you part of what I consider to be a persuasive answer to these critics:

"In the days of manual labor . . . and the stagecoach, there was no such problem, or if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few and the employe who exercised any reasonable degree of care was comparatively secure from injury. There was no army of injured and dying, with constantly swelling ranks marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come. Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty."

This passage, by the way, was written by Judge Winslow in *Borgnis v. Falk Co.*, a case heard by the Wisconsin Supreme Court in 1911. The case was a landmark decision dealing with workmen's compensation. Its application to our situation today is obvious.

The insurance industry does not present a unified front either for or against no-fault, as you know. Some segments of the industry, including some insurance companies, are very outspoken against a first-party system. Other companies, including my own, have fully endorsed the concept.

The result is some degree of confusion. In Massachusetts, for example, when a modified no-fault plan was enacted by the State Legislature there, most people—including the press—believed the insurance industry was against the reform. This was not the case at all. The dispute in that state was related to rate considerations unconnected with no-fault.

On the other hand, some people, notably the critics of no-fault, claim that insurance companies are pushing no-fault in order to avoid paying large jury awards, to clean up on profits, and in general to exploit the consumer and the public. This is nonsense. Our business is based on customer service. No-fault would help us meet this objective, not contradict it.

I believe, and my company and its affiliates believe, that by establishing the right priorities for the insurance system, no-fault reform would ultimately improve the situation not only of the public but the insurance industry. Today, sharp fluctuations in losses make the insurer's position too precarious to tolerate premium levels based on narrow or non-existent profit margins and require the application of long-range trend factors in the pricing computation. Under a first-party system, however, we would be able to predict losses with greater degree of accuracy. Thus we would be in a better position to develop adequate rates based on moderate but realistic profit margins, avoiding the violent swings that have characterized our business for the past ten years.

I personally believe that a no-fault system would have a favorable impact on the current crisis of insurance availability, as well.

Auto insurance is hard to get for a number of reasons, including restrictive rate regulation in many jurisdictions. But the problem goes deeper than this. The fact is that the liability system itself makes it necessary for insurers to try to identify and insure only the best drivers—those likely to escape accident involvement—in order to avoid the unpredictable costs of accidents involving unknown third parties and their automobiles. This effort is inevitably frustrating. I might add. But the result is that drivers in certain categories in certain locations find it virtually impossible to obtain auto insurance coverage on the open market.



Thus they are forced into assigned risk plans, which are less than satisfactory in many cases.

I feel certain that a no-fault system would lead to expansion of the automobile insurance market. Underwriting standards would be significantly changed. An individual's driving record would still be significant, but so would his income, the size of his family, the kind of car he drives. These are predictable factors, with assignable values. In short, insurers would be able to figure more accurately the costs of the risk they assume and, in a free and competitive market-place, would be able to offer coverage to virtually all licensed drivers.

In summary, both from the point of view of the public and the insurance industry, no-fault would be meaningful reform. I strongly believe this. I also believe that no-fault would be best implemented at the state level by the state governments, and I hold this view for several reasons.

First, in developing the no-fault plan that will be most effective in practice, we can learn much from the natural process of experimentation that occurs among the various states. While the no-fault concept itself may be a rallying point for most reformers, there is no consensus on the best type of plan. Some plans would set no-fault thresholds at \$2,000, some at \$6,000, some at \$10,000; other plans would set no limits. Some plans would pay total wage losses, others would set monthly limits of \$750 or \$1,000 or a specified percentage of salary. Some plans would include property damages in addition to bodily injury, others would not. Before the public, the insurers, and the legislators can reasonably determine the relative merits of each plan, we need to experiment, and this is most appropriately carried out at the state level.

Secondly, state governments are closer and potentially more responsive to the particular needs of their constituencies, and in the matter of automobile insurance these needs may vary considerably. Cost of living, for example, particularly medical care costs, often differs greatly from state to state—contrast New York State and Mississippi.

Thirdly, the experience developed by the states in their traditional role as regulators of insurance—including the immediate availability of professional staffs knowledgeable in insurance—could be put to good use in dealing with reform at the state level.

Despite my strong preference for state rather than federal action, I want to make it clear that I am not frightened in any way by the interest being given to auto insurance reform by the Federal government. On the contrary, I am encouraged by it. I am encouraged because it brings the urgency of reform into sharper focus. The activities of this Committee, its counterpart in the Senate, and the Department of Transportation—these activities provide not only direction for the states but incentive for them to act positively without delay.

Most importantly, Federal attention to the problem serves to alert the public. This is crucial: Ultimately public pressure will stir even the most recalcitrant state legislature to reform.

You may be interested in some recent events in Connecticut, which illustrate this point. This year the Connecticut legislature is considering no-fault for the second time. The first time was two years ago when Bill Cotter, then Insurance Commissioner and now our Representative from the First Congressional District, sponsored an unsuccessful drive to have a no-fault plan adopted.

This year, however, reformers were more optimistic. The major no-fault bill under consideration by the Legislature has the backing of the State Labor Council and a large portion of the insurance industry. In addition, the press has been very forthright in its support of no-fault.

The Committees' unanimous decision, reached just over two weeks ago, was to appoint a study commission to report back to the Legislature next year. This was a blow to those of us who considered prompt action to be imperative, but we were realistic enough to view the matter as closed.

Now it appears that we underestimated the enthusiasm of the press and the public for no-fault reform. Editorials in the past two weeks have been very critical of the Committee action and, as a result, today there is reason for some optimism: State Senator Lieberman, of New Haven, who introduced the bill, is working very hard to secure enough votes to petition the bill out of the Committee. He has a chance to succeed in this effort. In Connecticut, at least for the time being, public reaction to the postponement of the reform has brought no-fault to life again.

I am convinced that public pressure for reform is the most powerful force behind no-fault automobile insurance. This is suggested not only by events in



Connecticut but by various studies which show that an informed public is overwhelmingly in favor of no-fault as an alternative to the present automobile liability insurance system.

An informed public will support no-fault. But a public that does not understand the issues is a hindrance to reform. Results of a Gallup Poll published just last week dramatically illustrate the need for better public information. For the benefit of the Members of this Committee I would like to submit the findings of this poll for your records. In summary, these findings were as follows: Of the people interviewed by the Poll, conducted on April 3 and 4, 1971, 81 per cent were either uninformed or undecided about the question of auto insurance reform. Only 19 percent understood the basic features of no-fault. Of this total, however, support for no-fault was four-to-one.

Clearly, it is extremely important that public concern be activated. I hope that our film, which we will see in a minute, will contribute to this goal. I am confident that these hearings and those of the Senate Committee will also help to serve this purpose of public education.

Beyond this, I would like to see this Committee give its endorsement to the House Concurrent Resolution 241 and the recommendations of the Department of Transportation, thus recognizing that the overall public interest would be best served by implementation of no-fault reform at the state level.

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[From The Courant, Apr. 22, 1971]

#### NO-FAULT FAVORED IN INITIAL POLLING

#### GALLUP POLL EXCLUSIVE IN THE COURANT

(By George Gallup)

PRINCETON, N.J.—No fault insurance, which promises to be a big issue in the months ahead and is already being debated in many state legislatures, wins an initial favorable vote from those Americans who presently understand this new insurance concept.

A national survey completed in early April shows that 42 percent of all those interviewed say they have heard or read about the "no-fault" plan dealing with auto insurance. Only about half this number, however, can give a correct description of its main features and have reached an opinion about the plan.

Among this relatively small group (about one-fifth of the total adult population), opinion is 4-to-1 on the favorable side.

Under the traditional "liability" system, drivers are held responsible for their own negligence and buy insurance against the claims of their victims.

The no-fault plan covers injuries and losses directly regardless of the cause of an accident.

Debate over the no-fault, no-litigation approach has embroiled many state legislatures, divided the insurance industry and aroused the militant opposition of the legal profession.

Federal and state officials who favor no-fault insurance say the result of such a plan will be lower costs, more assurance of collecting, and a great deal less delay and litigation.

To obtain the results reported today, Gallup Poll interviewers talked in person to 1519 adults in more than 300 scientifically selected localities across the nation. Interviewing was conducted April 3 and 4. This question was asked first:

Have you heard or read about the "no-fault" plan dealing with auto insurance?

Four in ten (42 percent) answered in the affirmative. This group was then asked this question:

What is your understanding of this plan?

Those who had an understanding of the plan (19 percent of the total sample), were then asked this final question:

Do you approve or disapprove of the no-fault plan?

Following are the results based on the total sample:

#### *Opinion on no-fault auto insurance*

|                               | <i>Percent</i> |
|-------------------------------|----------------|
| Approve -----                 | 15             |
| Disapprove -----              | 4              |
| Uninformed or undecided ----- | 81             |

Mr. Moss. We can now dim the lights and proceed with the film.

(At this point the film entitled "After the Collision" was presented.)

Mr. Moss. I want to express my appreciation for the film.

Mr. Eckhardt?

Mr. ECKHARDT. Sir, there was one thing that concerns me about that film. That was the testimony of the man with the mustache who said there was no question of fault in his case, but there was great difficulty in his getting an ultimate settlement.

Now, what was the reason for that? There was no question of fault there and, yet, there was a long period of time before he could recover his payments for his injury.

Mr. WATKINS. Mr. Eckhardt, I can't give you the specifics in this case. I am sorry. These were all documented cases, actual cases, that were verified. But the facts and the particular insurance company that might have been involved, I don't know.

Mr. ECKHARDT. What I am trying to emphasize here is that there are two questions in every case today. One is the question of liability and the other is the question of the amount of damages.

So this man's testimony, it seemed to me, emphasized the fact that the amount of damages is still an issue which must be determined by some tribunal if the parties involved can't come to an agreement. Now, that is true, is it not?

Mr. WATKINS. That is correct.

Mr. ECKHARDT. Now, would you not then recognize that the adoption of no-fault insurance, though it may take one important and time-consuming element out of the case, still leaves another important and time-consuming element in the case?

Mr. WATKINS. I don't believe that would be too difficult to determine, because proper medical expenses and loss of wages—and it may well have been in the case of the mustached friend that the case of loss of wages was the issue in his case. This is purely supposition. I don't know. But, certainly, medical expenses that are covered under the various no-fault proposals are very carefully documented and identified.

One other aspect of the no-fault proposal, which is sadly lacking under our present system, is rehabilitation expense. Dr. Denenberg touched on it, and it is also touched on in the film. The matter of rehabilitation is something that is available for the more affluent, but frequently the person who doesn't have means to finance prompt rehabilitation simply loses the opportunity, and is not rehabilitated.

Mr. ECKHARDT. Please understand, sir, that I agree with you that the present system has many faults, and that some of these may be eliminated by a proper act. But I am just trying to get to the question of what is the meaning of the discussions in the film.

For instance, Governor Rockefeller stated—and I think I got a portion of his statement down accurately—that all of the costs of auto accidents would be met without having to go to court.

Now, do you consider that to be a true statement under the no-fault system—all of the costs of auto accidents will be paid without having to go to court?

Mr. WATKINS. It so happens—and I believe this is correct—under the proposal that was submitted to the New York Legislature this past year there was no limit on the medical benefits. It was completely unlimited. So that in that sense that it is a correct statement.

Mr. ECKHARDT. Did I understand then that his proposal as a no-fault system, which would be a first-party system, would include such things as total medical costs, would include loss of wages or loss of earning power without limitation?

Mr. WATKINS. I believe there is a limitation on the length of time of the loss of wages.

Mr. ECKHARDT. And would the payout be as losses accrue, or would there be provision for lump-sum settlement?

Mr. WATKINS. No, sir; they would be paid as they accrued.

Mr. ECKHARDT. And there would be no provision for lump-sum settlement?

Mr. WATKINS. No, sir.

Mr. ECKHARDT. Is there any provision for pain and suffering?

Mr. WATKINS. No provision for pain and suffering, unless the damages exceed a certain threshold.

Mr. ECKHARDT. So the mustached man was saying, in effect, that in order to get his relief, the question of fault was out of his case, but it probably took a considerable period of time to establish the question of his medical expenses, his loss of earning capacity, his other economic losses, his pain and suffering, and that this occupied a considerable period of time. That is, I think we may assume, what he was concerned with about the delay.

So, is it your suggestion, then, in order to save this time there be some limit of recovery; that is, the elimination of some of these factors, or an arbitrary time limit during which disability will be recompensed?

Mr. WATKINS. The proposal in virtually every no-fault plan is for the beginning of prompt payment as soon as expenses are incurred. There are very few plans that have dollar limits on the amount of medical reimbursement. They do have limits, such as H.R. 4994 has in it, of, I believe, 36 months and not to exceed \$1,000 a month, or \$36,000 on lost wages, but there is no limitation on medical reimbursement. And as the medical bills are incurred, they would be paid. If rehabilitation activities or attention is needed, that would be paid as it was incurred.

Mr. ECKHARDT. Would you favor a plan, such as the Puerto Rico plan, which has been described, in which there would be no-fault insurance respecting such items as total-temporary disability? There would be reimbursement of medical expenses. There would be reimbursement of actual costs to the victim during a limited period of time and to a limited amount, but after these benefits have been received, the person who was injured would then be entitled to seek general tort liability, these payments simply being offset against his total recovery?

Mr. WATKINS. My philosophy from the very beginning has been for a complete no-fault system. I recognize that that is not attainable in the present scheme of things. So I am not uncomfortable with various thresholds at which the question of tort liability can be pursued.

Mr. ECKHARDT. Well, the thing that troubles me is that in the bills that we have before us the no-fault provisions are not merely an offset against damages received by the individual but are a trade-off against his right to seek tort liability, and in certain instances the amount that he might recover would be very, very substantially less than he can recover under a tort system; that is, for instance, in the case of a man with 50 percent permanent-partial disability under the proposed Federal bill, H.R. 7514, which is very similar to H.R. 4994.



Would you favor a bill like H.R. 4994 if it did not contain the waiver of tort liability but merely provided that amounts paid under the no-fault system would be an offset against recovery in a suit for damages exceeding the amount of the bill?

Mr. WATKINS. No, sir; I would not favor such a bill.

Mr. ECKHARDT. Then what you are saying really is that you favor not just no-fault insurance, but also a system by which recovery is limited, something like the workmen's compensation in the country?

Mr. WATKINS. The recovery of the economic loss is not limited. I feel that every injured person, whether he is an innocent accident victim, or whether it was his own fault, or whether it was a single-car accident, would be entitled to all of his economic loss.

Mr. ECKHARDT. Then you would favor an amendment to H.R. 4994 that would eliminate the 36-month limitation and the \$36,000 limitation?

Mr. WATKINS. You corrected me, sir. I am in favor of a limitation on the length of time wages can be paid.

Mr. ECKHARDT. That is an economic loss, is it not?

Mr. WATKINS. That is true.

Mr. ECKHARDT. And so you want to eliminate economic loss and you want to eliminate pain and suffering; is that correct?

Mr. WATKINS. I am in favor of the elimination of suits for pain and suffering, unless it does, as H.R. 4994 describes it, fall into the catastrophic area.

Mr. ECKHARDT. Which would have to be at least 70 percent permanent-partial disability.

Mr. WATKINS. Right.

Mr. ECKHARDT. What about the fellow who has a serious injury to his back and he has been a longshoreman? Subsequent to his injury, his work has been as a common laborer at, say, half the pay. You would say he would be entitled to compensation during the 36 months, but after that whatever bodily impairment he has to prevent him from earning the wages before he must just suffer without remuneration.

Mr. WATKINS. Well, Mr. Eckhardt, the case you just described, I think, would undoubtedly exceed any threshold that was suggested in any of the plans, from a practical standpoint.

Mr. ECKHARDT. That might be true in that particular case. Suppose he was a plumber or pipefitter?

Mr. WATKINS. I think the medical expenses alone in the type of case that you have described—and, of course, this is pure conjecture we are talking about—would cross any threshold that has been suggested.

Mr. ECKHARDT. It would in the Massachusetts case, but the threshold under the Federal bill is 70 percent liability or disfigurement and certain other items. So it wouldn't cross that threshold. You would then be in favor of using a threshold which utilized a fixed figure for medical treatment as in the Massachusetts plan?

Mr. WATKINS. I wouldn't be unhappy with that, no.

Mr. ECKHARDT. I would rather agree with you that some threshold similar to the Massachusetts plan should trigger the right to tort liability.

Would you say that you preferred that to the provisions of H.R. 4994 which uses a triggering device of 70 percent permanent-partial



disability or disfigurement or, of course, permanent and total disability?

Mr. WATKINS. Yes. But, of course, let the record show, please, sir, that I am not implying I am in agreement with the threshold in the Massachusetts law.

Mr. ECKHARDT. That is what I asked you. Which would you prefer between the two, the Massachusetts plan or H.R. 4994?

Mr. WATKINS. I think the Massachusetts law is entirely too low, and as you point out, H.R. 4994 doesn't have such a threshold. It has a percentage of damageability. I thought we were talking a dollar amount such as \$5,000 or \$10,000 of medical expenses.

Mr. ECKHARDT. I think we may find some area of agreement if you would feel that a threshold figure would embrace any substantial permanent-partial disability so that then damages for such would be coverable. Of course, I think you are correct that threshold would be met in most cases if medical costs at around \$500 were used.

But if you go much above that, you can have substantial permanent-partial disability without meeting the threshold that triggers tort liability. For instance, the loss of an eye may not incur a terrible lot of medical expenses.

Mr. WATKINS. Mr. Eckhardt, this is one reason that we so strongly favor experimentation at the State level rather than one mandated Federal plan countrywide, because I don't think anyone at this juncture knows exactly what is the workable threshold or what are the workable mechanics of a no-fault system. It is something that is entirely too new to, I think, be effectively identified on a countrywide basis at one fell swoop.

Mr. ECKHARDT. Well, of course, there is another conservative approach to adopting such a provision and that is simply to adopt a no-fault standard which has rather low limits but which in no way impedes tort action after those limits are exhausted, with the provision for subrogation, with respect to the payments under the no-fault system. What do you think about that approach as a Federal approach?

Mr. WATKINS. I would like to see any system, if it could, avoid the expensive and really great nuisance of subrogation. I think that any system that is adopted certainly should have the payments that have already been made deducted from whatever award is eventually given.

Mr. ECKHARDT. Well, if you consider it as merely a deduction from the liability. What about doing that rather than proceeding on the State basis? What about providing a rather modest no-fault system at the Federal level and see how it works?

Mr. WATKINS. Well, this is what makes horse races, Mr. Eckhardt. I just feel that the public is going to be better served by the implementation of this philosophy, this no-fault philosophy, at an individual State level rather than by single Federal statute mandating the coverage.

Mr. ECKHARDT. Well, let me be perfectly frank with you as to my feelings and what I am leading to. I am familiar with the comp system in various States, and I am also familiar with the fact that it is grossly incompetent for really making a person whole in many States.

Now, if we leave this question to the States, and we have States that will abolish tort liability, and at the same time limit recovery, it seems to me we can do great harm to a great number of persons. I would be

hesitant, as a Member of Congress, to simply give a blank check to the States, plus an encouragement toward a no-fault insurance system including curtailment of present common law measurement of damages.

Now, perhaps the States are going to act properly under present impulses, because you have several different factors influencing them. But if we simply encouraged the States or demand that the States adopt no-fault systems, and we don't take care of the situation where a person has serious and long-term partial disability, it seems to me we may do much more harm than we do good.

Mr. WATKINS. Mr. Eckhardt, I sense a change rapidly coming within the various States. Dr. Denenberg referred to it this morning in his testimony in that the States realize that they are under the gun. I think over the past few years there has been a material strengthening of the staffs of the insurance departments of the States, speaking of insurance regulation—and you mentioned workmen's compensation—and greater attention is certainly being given to this. If I may say so, the insurance industry has done everything it can to encourage the improvement and restructuring of benefits in many of these States, some of which he mentioned this morning.

So I think you are going to see greater activity at the State level over the next few years than we have seen for probably the past 50 years in this area of regulation, and I think this is a healthy thing, and I would like to see it encouraged.

Mr. ECKHARDT. If this be true, why do we need to legislate at the Federal level to tell them what they have to do within certain parameters? Why don't we just let them effectuate these reforms that you say they are willing to effectuate anyway?

Mr. WATKINS. Your interest, the interest of the Congress, is, of course, the most encouraging inducement that the States have, and as I said in my testimony this morning, I welcome it. I think your activities are very helpful in this regard. However, I do feel that the adoption by the Congress of guidelines rather than standards at this stage is by far the preferable step.

A couple of years from now let us review the bidding, and if there has been only very partial or only very insignificant action taken by the States, I have an idea that I would have changed my mind by then.

Mr. ECKHARDT. Well, sir, I am afraid that your suggestion is comparable to whipping the horse without controlling the reins, and I would be somewhat reluctant to do that.

Mr. WATKINS. Well, the Congress can always pick up those reins.

Mr. ECKHARDT. I think we ought to keep them well in hand if we are going to bring into effect an entirely new system of liability in cases involving automobile accidents. But that is just my opinion.

Thank you, sir.

Mr. MOSS. Mr. Ware?

Mr. WARE. Only one question. Is the film which you presented available to community groups and so forth?

Mr. WATKINS. Yes, sir; that is our intention. It was produced as a public service.

Mr. MOSS. Mr. Cotter?

Mr. COTTER. If I may, Mr. Chairman, I want to thank you for having invited me today.

I will tell you a little bit about Mr. Watkins. He has taken the forefront in automobile insurance reform, and he has made a great contribution to the State of Connecticut.

I would like to ask one or two questions to pursue Mr. Eckhardt's line of questioning. Apparently, from my studies and what I have learned about the business, the real problem is in the small claims; is this correct, Mr. Watkins?

Mr. WATKINS. That is correct.

Mr. COTTER. And am I also correct that 90 percent of the claims are \$3,000 or less?

Mr. WATKINS. At least that many, yes.

Mr. COTTER. If this is the case, if these can be settled fairly, equitably, and efficiently, can't there be a great savings accomplished in the premium dollar?

Mr. WATKINS. There will be a savings in the premium dollar, and, of course, most importantly, there will be a greater proportion of the premium dollar that will go to the beneficiary, to the victim.

Mr. COTTER. Now, we get to the case of the person who is severely injured, loss of a limb, loss of an eye, a bodily function. Could this not be handled satisfactorily under a tort system once we eliminate both of these small cases?

Mr. WATKINS. I expect it could, and this is really the intent of the so-called threshold systems that have been recommended, that is, a permanent injury or disfigurement of a bodily function.

Mr. COTTER. One other question. You have had experience in Connecticut. You have seen this type of legislation bottling up. As I recall, the judicial committee of the general assembly was composed of some 34 members, 32 of whom were attorneys. Actually, they had an interest in the matter.

Do you feel that if this committee were to adopt a good no-fault bill, if they were to adopt it and have an effective of 3, 5 or 7 years hence, that this would be an impetus to the States to get moving?

Mr. WATKINS. It would certainly be an impetus, yes.

Mr. COTTER. With the provision that if the States adopt such a similar bill before that period of time, would this be effective?

Mr. WATKINS. Yes, Mr. Cotter. Undoubtedly, it would be an incentive to move the States to action. The only question that remains there is: If the State doesn't act in that length of time, would the Federal law be really the best law or the best program for that particular State? Let us compare again New York and Mississippi.

Mr. COTTER. Well, what I am looking at is the failure of the States to move in this particular area, and the legislative hang-ups and the inability to get off of dead center.

I felt that if this committee were to adopt a bill with minimum standards, giving the States an opportunity to move within a given period of time, and if they were able to move within that period of time, the statute enacted by the State would become law and not necessitate the Federal law taking effect.

I feel that unless there is something coming from the Federal Government, these States are going to fail to do anything along these lines of reform.

Mr. WATKINS. I would like to—and I am repeating myself now—to see the States given the opportunity to do that. Then if they don't, then a couple of years from now let us review the bidding.



Mr. COTTER. Philosophically we agree, and I feel the States should be permitted to regulate in this area; but we are faced with the proposition they are not acting, and there doesn't seem to be any incentive to have them act.

Mr. WATKINS. As I said, I believe you are going to see a greatly increased activity at the State level in the next few weeks and months. There is a tremendous amount of attention being focused on your activities and those in the Senate, and it is disturbing an increasing number of State legislators, and that, more than anything else—that and an informed public—will move the State legislators to take some action.

Mr. COTTER. Thank you, Mr. Chairman.

Mr. Moss. Well, Mr. Watkins, I think you have been an excellent witness. I am going to do a little checking to see how valid some of your assumptions are as to what the States are doing. I am going to find out the staffing patterns for each of the 50 State insurance departments for the past 3 years and their budget totals, and we will see which way they are pointing, because you voice far more confidence in the ability of State legislatures to move in a timely fashion than I do.

I have served in my State legislature in California. I have watched with interest the progress at an unbelievably slow pace of no-fault in my State legislature. I imagine I will be watching that progress a number of years from now.

I am concerned over the possibility that we adopt a policy, if we just take the resolution of the Department of Transportation, which merely postpones facing up to the inevitable.

I think perhaps we can devise as an alternate, if we have to have an alternative proposal, a system of imposing Federal standards which would become effective and would preempt, if the States failed to act within a specified period of time. But nothing I have ever seen in the actions of the State legislatures convinces me that they would move.

Mr. Volpe says we need a change now, and you say we need a change now, and all of the witnesses—and I imagine we will hear from some today that we don't need a change now—but all of the witnesses to date tell us we need a change now.

It is my opinion that if the State legislatures moved with unusual speed, it would take a decade to have all 50 act, particularly in view of the fact that perhaps five of the States probably have the problem of amending their State constitutions, and some of those are important States.

Certainly the State of Pennsylvania is a very important part of this picture, this laboratory which everyone wants us to use.

I am interested in the great urge to have us use the State legislatures as laboratories to give us diversity when I have so often here in the Congress had the pressure the other way to impose standards.

We have had it in automobile safety, and I believe that your own position would be that we must have Federal standards there if we are to have meaningful improvement in the safety of the vehicles placed on the highways of this Nation. Am I correct?

Mr. WATKINS. I agree with you, sir.

Mr. Moss. I think this is an equally important problem. It is nice to look at the States and say these are the ideal instrumentalities to take on problems of this type. But the man from Mississippi, while his



income may be very low, is not the only one subject to the laws of that State. If I drive through it, I am, too. So I have the problem of how do I protect myself without additional cost as a result of achieving this diversity between the States.

But I do want to thank you very much for your appearance here and for permitting us to be the first to view your new film.

Mr. WATKINS. Thank you for the opportunity.

Mr. MOSS. Our next witness is Mr. Leonard Woodcock.

**STATEMENT OF LEONARD WOODCOCK, PRESIDENT, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW**

Mr. WOODCOCK. Thank you very much, sir. I have with me Mrs. Mildred Jeffery who is from our consumer affairs department and Mr. Jack Beidler who is with our legislative department. I approach this with some difficulty after following such a knowledgeable witness with whom I have such basic differences.

I do agree there is growing resentment among all Americans today against the practices of the automobile insurance industry. Our own members have been deeply disturbed about soaring premium costs, interminable delays in court settlements, arbitrary cancellations and refusals to renew their insurance.

We believe that something must be done now to institute drastic reform of a system that is obsolete, unjust, wasteful, and chaotic.

The automobile industry moved out of the horse-and-buggy era half a century ago, but the auto insurance industry is still in it. Like the horse and buggy, it is a relic which ought to be in a museum. It takes too long to get where we want to go, and its inefficiency results in a very high cost product. The high cost derives in large part from the concept of determining which driver is at fault in an accident.

The Senate's Antitrust and Monopoly Subcommittee has shown that only 42 cents of every dollar of insurance premiums goes to pay benefits to claimants. The balance of 58 cents—less profit—is used up by general operating expenses, claim adjusting, claimants' lawyers fees and court costs. A substantial portion supports the complex legal machinery required to determine who is at fault in an accident and to what extent the injured party is to be compensated.

Both the Senate subcommittee hearings and the Department of Transportation study on auto insurance litigation show that contested claims for 1969 auto accidents will result in legal fees totaling some \$1.1 billion, conservatively estimated to be one-fourth the total income of the legal profession for that year.

By moving to a no-fault system, under which most claims would be paid without legal maneuver or judicial intervention, auto insurance would play a much more economical role in accident compensation and, in many cases, offer a much more timely reimbursement for accident loss.

There are those, primarily in the insurance industry and the legal profession, who project into the existing system some ancient Anglo-Saxon principles of justice and retribution which they insist ought to be preserved. They argue that one should not profit from his own wrong, but obviously collision insurance and medical coverage substantially obviate this contention.

Even more significant, the very act of sharing loss through payment of insurance premiums so removes the financial stress from the individual as to depersonalize the matter. The wrongdoer is insulated from liability since the individual motorist is relieved of heavy financial liability by spreading the risk among all insured motorists. What results is a dispute between insurance companies.

To the policyholder not involved in the accident, the concept of justice is irrelevant. He may reach old age without ever being involved in an accident and be left only with a feeling of having wasted his money.

Testimony before the Senate committee over a 3-year period documents in case after case the unfairness and inequities of uncontrolled practices of the insurance industry in selecting those it considers the best risks. Particularly vicious are the cancellations of policyholders over 62 who are forced to seek coverage with another insurer, often at double the rate, or to go into assigned risk pools. These cancellations are arbitrary, giving no consideration to the driving record or the physical health of the person.

The whole system of auto insurance is designed to avoid responsibility for one's own acts.

I might point out that the existing system penalizes large numbers of individuals without any justification whatsoever.

Young males, and persons in certain occupations are penalized heavily on account of factors having nothing to do with their own driving competence or personal records as operators of motor vehicles. I am, in fact, surprised that our youth have not leveled more direct criticism at a system that convicts and penalizes many of them solely for the crime of youth.

How much more fair it would be to remove from the system these theoretical applications of tradition, and to make payments from the insurance pool simply on the basis of actual loss.

Concepts of personal guilt and individual responsibility do play an important role in our society. It is important for individuals to know that society condemns certain acts and that society expects certain kinds of behavior.

It is important that the court system be fair and prompt.

We are much concerned today that courts take too long to decide criminal cases, that the rights of defendants are unconstitutionally denied by undue delay, that the rights of society are threatened both by lengthy incarceration and lengthy freedom before trial.

Much of legal delay could be significantly shortened through transition to a no-fault system of auto insurance. The Department of Transportation's report on auto accident litigation estimates that 17 percent of our judicial resources in 1968 were devoted to auto accident litigation.

The impact of such litigation on the courts varies widely, but it is generally greatest in metropolitan areas where most people live and where most victims seek compensation. In Iowa County, Iowa, for example, it is 3 percent. But in Wayne County, Mich., where Detroit is situated and autos are an essential means of transportation for most workers, it is 40 percent.

This increase in auto accident suits is taking place at a time when the backlog of cases in our courts has reached deplorable levels. In Los

Angeles, for example, there are 42,000 civil and criminal cases awaiting trial. Philadelphia has 427 untried homicide cases.

As a result of these heavy court dockets, the average accident victim with a loss over \$2,500 must wait 1 year and 7 months before he is awarded any compensation. In Wayne County, a claimant must wait 4 years before his case even comes to trial.

This wasteful application of judicial and legal time and talent to a high-cost, low-return system whose major function is to enrich lawyers and assess damages against insurance companies is little short of scandalous.

Additionally, the present auto insurance system does not fairly compensate for losses incurred in accidents. The Department of Transportation's March 1971 report clearly shows that recovery is deeply influenced by factors irrelevant to loss, such as the limits of an insured's coverage and the cost to the insurer of settling claims of various sizes. Thus recovery for small claims tends to exceed substantially actual economic loss, whereas recovery for larger claims tends to be only a fraction of established loss.

A study by the insurance industry, itself, showed that claimants with a permanent total disability had an average total economic loss of \$78,000 but received settlements averaging \$12,566—only 16 percent of their loss.

The existing system tends also to delay reimbursement. The higher the claim, and presumably the greater the need for prompt reimbursement, the longer it takes to achieve settlement. The Department of Transportation report shows that seriously injured victims, and the survivors of deceased victims, waited an average of 16 months for final payment.

Finally, of those injured in auto accidents or the survivors of those killed, only 45 percent benefit in any way from the present system. This fact alone shows the system is not viable, and demands prompt change.

I wish also to question the appropriateness, over any lengthy period of time, of the continuation of inclusion of payment for medical expenses in auto insurance programs. I recognize that to the extent that such coverages are now included they may meet presently compelling needs. On the other hand, they are uneconomic in that they frequently represent duplicate coverage of health insurance programs which car owners have as a result of their employee relationship or through individual purchase.

For example, to take the most obvious illustration, as of December 31, 1969, more than 147 million people under the age of 65 in this country carried some kind of insurance for hospital care. Since the 34 million people without such coverage are most likely to be in the poverty group, it is unlikely that any significant number of them would also be automobile owners.

Accordingly, it would appear that the overwhelming majority of people who have medical expense coverage under auto insurance, at least for the hospital care part, do not require it. While the percentages of persons carrying coverage for surgery, physicians' services in and out of hospital, X-ray and laboratory services, et cetera, are considerably lower, the area of duplicate coverage is nonetheless quite high.

Furthermore, the payment for medical expense by automobile insurance firms is probably as uneconomic and wasteful a way to provide



this coverage as it is possible to conceive. It constitutes, basically, payment for care in dollars and cents by an underwriter who has no functional relationship to the providers. Accordingly, there can be no effective cost or quality controls and no meaningful determination of appropriateness of services rendered.

From a public policy point of view it would appear far more useful to see to it that every American has access to good health care through an appropriately structured national health insurance program—one which would make it possible for him to get preventive, diagnostic, treatment and rehabilitative services for sickness and injury regardless of how the sickness and injury may have been caused.

What is needed is a program concerned with the structure and organization of health care services and with appropriate controls on costs and quality.

The UAW is supporting the health security program introduced in both houses of Congress under bipartisan sponsorship because it meets these objectives as part of its approach to universally adequate and efficient health care.

It is worthwhile to point out that unduly high insurance premiums have an inhibiting effect on productive economic activities. The premium money saved by users of automobile insurance conceivably would be diverted to purchases of consumer goods.

There can be no question that the inflationary spiral of auto insurance rate increases has adversely affected consumer spending. The escalating cost of auto insurance is also a deterrent to sales. For example, in my own State of Michigan, premiums for auto liability insurance have increased 115 percent since 1962. Nationally, from July 1960 to July 1970, the cost of auto insurance rose 65 percent. This 65 percent increase is more than 50 percent higher than the take-home pay increase for nonsupervisory and factory workers during that same 10-year period.

A change to no-fault would result in savings to consumers of a major portion of the difference between the \$11 billion paid in premiums and the \$6.6 billion paid to claimants in 1968. These savings would be in high velocity dollars, and the resultant increase in consumer purchasing power could importantly help lift a sagging economy.

The idea of no-fault insurance is not new. It has been proposed off and on over the past 52 years.

In 1919, two attorneys, Rollins and Carman—in two unrelated legal articles—suggested that the workman's compensation no-fault principle be adapted to the problem of auto accident compensation. A more detailed proposal was advanced by Judge Robert Marx of Cincinnati during the 1920's. The Columbia University Auto Accident Report of 1932 followed Marx's proposal. The report explicitly advocated scrapping the concept of tort liability and recommended a no-fault workmen's type solution. Since that time other studies have made similar recommendations. One of the more notable, "Basic Protection for the Traffic Victim," was published in 1965 by Robert E. Keeton and Jeffrey O'Connell, professors of law at Harvard College and the University of Illinois, respectively.

No-fault insurance has been tried in other countries and it works. For nearly 50 years a limited no-fault system has been operative in England, a system to which all insurance companies subscribe. Studies



show that the British system eliminated the crushing burden of auto litigation that overwhelms the courts in the United States and there is no evidence that no-fault encourages reckless driving.

Further, premium rates paid by British motorists are much lower than in the United States. Mr. George J. Stewart, chairman of the Insurance Marketing Group reports that when you compare premium costs for comprehensive insurance for cars in three equal price and power ranges you find the following:

*United States*

|                           |              |
|---------------------------|--------------|
| Cadillac (urban)-----     | \$861-\$1107 |
| Cadillac (suburban)-----  | 353-486      |
| Chevrolet (urban)-----    | 558-767      |
| Chevrolet (suburban)----- | 245-357      |
| Ford (urban)-----         | 590-767      |
| Ford (suburban)-----      | 245-357      |

*Britain*

|                        |             |
|------------------------|-------------|
| Jaguar (urban)-----    | \$240-\$331 |
| Jaguar (suburban)----- | 132-208     |
| Austin (urban)-----    | 135-175     |
| Austin (suburban)----- | 72-94       |
| Rover (urban)-----     | 214         |
| Rover (suburban)-----  | 113         |

The hazards of driving are in fact less in this country than in Great Britain. Nevertheless, the British motorists pay in premiums 50 to 60 percent less because of the wisdom of their country's system of no-fault insurance.

The Canadian experience with government-operated insurance goes back many years. The Province of Saskatchewan's no-fault insurance program dates back to 1946. It is run by a Crown Corporation, the Saskatchewan Government Insurance Office and was first organized under the auspices of the Cooperative Commonwealth Federation. A test of its endurance and of consumer acceptability came in the mid-sixties when the government changed hands and a party opposed to government corporations took office. The program was continued and is still working.

In Manitoba there is presently under discussion a new plan which will reduce premium costs as much as 50 percent with an average reduction of 20 percent.

There is, not surprisingly, strong objection to no-fault by many members of the legal profession. I can understand their position, but I cannot condone it; fault applies in no other area of insurance. Senator Hart aptly described "this incredible and inapplicable standard" when he told his colleagues: "We do not refuse to pay the hospital bill for the patient who didn't wear his rubbers in the rainstorm or a fire insurance claim for the homeowner who dropped a cigarette."

The present fault liability concept is unjust not only because it generally fails to compensate adequately and does not deter accidents, but because it confers the greatest injustices on the poorest and the most disadvantaged members of our society.

The Department of Transportation's report on economic consequences of automobile accident injuries showed that in serious injury cases families with incomes under \$5,000—which account for almost one-third of all U.S. families—recovered only 38 percent of their economic losses. Families with incomes over \$10,000, however, recovered

61 percent of losses—and those with college training recovered 64 percent.

Yet the low-income families are likely to be paying the highest premiums for this lack of protection. The New York Times reports that 70 percent of the New York City car owners who are compelled to apply for high-cost assigned risk coverage are blacks or Puerto Ricans living in ghetto neighborhoods. Of the half million auto owners in New York's assigned risk pool, two-thirds have sufficiently good driving records to qualify for standard rate insurance, and almost one-half qualify for a safe driver discount. This exploitation smacks of the dark ages. The time has come for bringing this Nation's auto accident compensation system into the light of the 20th century.

In recent years our new awareness of safety and alcoholism as a disease has resulted in substantial congressional authorization to promote safer automobiles, safer highways, and safer drivers. Progress is being made in accident prevention. We must now take the next steps.

Simple fairness requires that we remove from the auto insurance system the long delays, unconscionably high costs and uneven compensation which now characterizes it. We believe the no-fault system will achieve those goals.

H.R. 7514, introduced by Representative John Moss would, we believe, form the basis for a realistic no-fault system. We are pleased to note that this bill, as contrasted with the original Moss-Hart bill, increases the income benefit period to 36 months.

We feel this is less than adequate for persons suffering long term disability. It would be more desirable if there were no time limit on disability payments. On the other hand, because of uneven compensation under the present system, it is clear that more people will receive better compensation under the Moss proposal.

In general the bill would assure timely and actual compensation for economic loss, something the present system does not offer. It would also guarantee that a far greater proportion of the premium dollar would go to compensation than is now the case.

For those whose losses are greater than the benefit levels provided in the bill, the courts remain as an instrument for recovery. I would emphasize, however, that these levels are modest. Any reduction would raise serious questions as to the viability of the replacement system.

We believe, also, that a realistic no-fault law can ease greatly the burden that unduly high insurance premiums impose by making it possible for all drivers to purchase group insurance—especially in the 35 States that now prohibit such plans.

The economic concept of group auto insurance is the same as that which governs health insurance groups—everyone pays the same rate for a specific benefit package. Group auto insurance is an appropriate collective bargaining matter. Its achievement would extend the benefits of lower cost and more adequate compensation beyond the union membership; UAW's negotiated improvements in group health insurance, for one example, have benefited every American family because the plans became available to all non-UAW groups as well.

The whole concept of no-fault insurance has reached such a point that Secretary of Transportation John A. Volpe has recommended to Congress that all of the States be encouraged to pass legislation placing it into effect. Action on a State-by-State basis, however, would

take at least 5 years even if the States cooperated and proved a new willingness to withstand the blandishments of the insurance lobby.

We cannot wait for the States to act. No-fault insurance has been advocated for nearly 50 years but to date only a handful of States have considered acting and, in fact, only Massachusetts has acted.

Furthermore, until no-fault insurance is adopted nationwide the driver who has an accident in a State that has not yet adopted the no-fault system may find himself facing financial disaster because of the lack of uniform laws.

State-by-State adoption of no-fault insurance would, it seems to us, merely aggravate the growing consumer frustration with the present nonsystem and compound existing inequities in auto accident compensation. What difference should it make whether you're injured in California, Texas, Michigan, or New England?

Without getting into these special cases, it is clear that the first States enacting adequate no-fault will actually be penalizing their citizens because their policies will have to contain both no-fault for in-State protection and liability insurance for out-of-State driving.

The UAW believes that automobile insurance should be regulated by a Federal agency instead of by individual States. Few States can hire the professional staffs needed to cope with their regulatory obligations. A single Federal agency could afford highly competent attorneys, accountants, and actuaries and could use their services efficiently in the public interest.

In conclusion, I suggest that the impatience of the car owners of our country is mounting. Resentments grow as premium costs continue to skyrocket, cancellations and renewals are unjustly dictated and benefit payments are long delayed. Some in their deep frustration have suggested that the entire automobile liability insurance be turned over to the Government.

I urge your favorable action on H.R. 7514 as an important first step to reform of an antiquated and unfair auto insurance concept and your earnest consideration of other consumer groups are proposing.

Mr. Moss. Thank you very much. I wonder if it would be convenient for you to wait 15 minutes while we recess and respond to the roll call, and then return.

Mr. Woodcock. Yes, sir. It would.

Mr. Moss. Fine. The committee will stand in recess for 15 minutes. (A brief recess was taken.)

Mr. Moss. The committee will be in order. Mr. Eckhardt?

Mr. ECKHARDT. Mr. Woodcock, I was very interested in your relating this problem to the question of general health insurance itself. Suppose we consider three areas of loss, one being medical and hospital expenses.

In that area, I would assume you would prefer to have that covered substantially through a national health plan rather than through an insurance plan if you could choose; would you not?

Mr. Woodcock. That is correct; yes, sir.

Mr. ECKHARDT. I was noting in the motor vehicle crash losses and their compensation in the United States, a booklet of the Department of Transportation, page 49, "Estimated automobile liability insurance operating expenses for 1968", in which there is a breakdown by dates. One item, "Insurance sales expenses" includes commissions and brokerage, other acquisition expenses at 36 percent.



Of course, that is the slippage, if you utilized private insurance for the purpose of hospital and medical costs; is that not correct?

Mr. WOODCOCK. Yes. That would also, of course, relate to individual policies for just health insurance generally.

Mr. ECKHARDT. That is true. But if you had a national program, you would assume that could be greatly reduced with respect to competitive advertising.

Mr. WOODCOCK. If we eliminated fiscal intermediaries, we believe we could equate the record of the Social Security Administration, or not very far from it, which would be substantially below 10 percent.

Mr. ECKHARDT. Of course, that would then give something like a 26 percent advantage in this area.

Mr. WOODCOCK. I would assume that to be true from those figures, yes, sir.

Mr. ECKHARDT. It was interesting to me that the film that we just saw—you were here while it was being shown, were you not?

Mr. WOODCOCK. I just saw the tail end of it, unfortunately.

Mr. ECKHARDT. It included the Puerto Rican plan, which, as I understand, is a nationally funded plan.

If insurance is covered either through the Government or a Government corporation, presumably that would eliminate these high sales costs. There, of course, it makes little difference whether no-fault insurance covers medical or hospital or whether some other type of medical plan covers it, because, at any rate, you are eliminating the sales cost.

Mr. WOODCOCK. From that aspect, that would be true.

Mr. ECKHARDT. Let us set that aside for the moment. If the medical and hospital costs could be covered by a national health plan, that would be extremely desirable and would tend to reduce costs substantially. I think we can agree on that point, can we not?

Mr. WOODCOCK. We can.

Mr. ECKHARDT. The second aspect that occurs to me is the loss of wages during a period of time while a person is hospitalized or receiving medical treatment, that which is comparable to the temporary-total disability in comp matters.

There would be some hopefully relatively short period of time when this period of medical treatment and rehabilitation is in its most intense stage and when there is wage loss.

Of course, it is difficult to divide that precisely from permanent-partial disability, but at least it is a recognizable area, as I understand it.

Now, it would seem to me that no-fault insurance covering some limited period would be quite desirable.

Mr. WOODCOCK. There would obviously be a step in the right direction.

Mr. ECKHARDT. And you would agree to that.

Now, the thing that does trouble me with all of the plans that have been offered, it seems to me, particularly with respect to those introduced in Congress, there is a kind of trade-off for no-fault insurance with limited liability as against the chance of recovery under tort liability.

It strikes me that neither is wholly satisfactory, because I am concerned about a man who has, say, a back injury that can't be called



disfigurement and is something less than 70 percent permanent-partial disability but is not adequately covered by a 36-month period or even perhaps a \$36,000 limit.

Now, it would seem to me that with respect to any permanent-partial disability, there should be preserved a right to bring a suit under ordinary tort law; of course, recognizing that portion of the injury that has already been paid in other means would be offset against recovery. What would be your view as to this third category, that is, the residual disability that exists after the critical stage of treatment?

Mr. WOODCOCK. We are in complete agreement with that. There are limits which are reasonable in terms of the clogging of the courts, which is a side problem of this; that the overwhelming number of cases in the high 90 percent would be so covered. But there should be the continuing ability of the claimant to have this additional recourse.

Mr. ECKHARDT. Yes, depending on how high you pegged the maximum with respect to your no-fault insurance, you would have a higher or lower number of cases that would drop out from the tort claim area.

Mr. WOODCOCK. That is correct.

Mr. ECKHARDT. I have the feeling, however, that when it is shown that the disability exceeds the limits contained under no-fault, there should be no impediment whatsoever to a tort claim after that time. What is your view on that point?

Mr. WOODCOCK. We agree with that.

Mr. ECKHARDT. Thank you, sir.

Mr. MOSS. I want to thank you very much for appearing here and giving us the views of your organization that is recognized as a leader in many fields for the coverage of its members, and I believe you have used it quite valuably.

Mr. WOODCOCK. Thank you, Mr. Chairman.

Mr. MOSS. Our next witness is Mr. Robert V. McGowan.

Mr. McGowan, are you about to summarize your statement?

#### **STATEMENT OF ROBERT V. MCGOWAN, PRESIDENT, NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS**

Mr. MCGOWAN. Yes, Mr. Chairman.

Mr. MOSS. Then we should place the entire statement, together with the exhibits, in the record and carry this as a summary only.

Without objection, that will be the procedure.

Proceed.

Mr. MCGOWAN. Mr. Chairman and gentlemen of the subcommittee, my name is Robert V. McGowan of North Attleboro, Mass. I am the owner of the R. V. McGowan Insurance Agency, Inc., in North Attleboro, which I founded and have operated since 1954. I am also the current president of the National Association of Mutual Insurance Agents, an organization of more than 18,000 members in nearly all 50 States, and with headquarters in Washington, D.C.

Accompanying me here today are our general manager, William A. Stringfellow, CPCU, and George G. Potts, our director of government affairs, both from Washington, D.C.

It has been reported that nearly 70 percent of the property and casualty insurance which is written in the United States is handled

by independent insurance agents. That figure suggests at least two important and related ideas: That we have almost constant contact with a large majority of the insurance-buying public; and also that we have firsthand feedback of their views on what is good and what is bad about our business.

I cannot overemphasize the influence that this knowledge has had in defining the position of our association on the matter of automobile insurance reform legislation which is before this subcommittee, and which I am privileged to bring to your attention at this time.

Mr. Chairman, let me say at the outset that automobile insurance is no longer a product that one may choose to buy or not to buy. It has become a practical necessity. The advent of compulsory insurance and financial responsibility laws, plus the increasing incidence of automobile accidents and the larger judgments resulting from them require the purchase of insurance to protect one's property and standard of living. It is little wonder then that the principal product sold by the independent agent is automobile insurance.

Earlier at these hearings and on previous occasions at Senate hearings there has been testimony challenging the need for the services of the agent in the marketing of automobile insurance. This proposition is completely unknowing and irresponsible. To fully appreciate the many and varied implications of the independent agent's involvement in the sale and servicing of automobile insurance, I ask for permission to insert into the record at this time as exhibit "A", a description of just some of the myriad duties performed by the independent agent in looking after the insurance needs of his automobile policyholder.

Mr. Moss. Is there objection to the request?

If not, the matter will be included in the record at this point.

(The document referred to follows:)

#### EXHIBIT A

#### THE ROLE OF THE INDEPENDENT AGENT IN THE MARKETING OF AUTOMOBILE INSURANCE

Reliable estimates indicate that there are more than 150,000 local independent insurance agents in the United States—one of the nation's largest groups of small businessmen. They are in a unique position to understand and serve the problems of their clients and their communities. Each represents a number of insurance companies, often both stock and mutual, which gives them the freedom to "tailor make" an insurance program based on the actual needs presented. Because they are not the employees of any particular company, they are in a position to arbitrate claims and adjustments to the advantage of their clients.

The evidence is irrefutable that people want professional service in the insurance field, and are willing to pay for it. A 1966 study conducted by Opinion Research Corporation for the Insurance Information Institute presented findings of a study conducted among 2,003 men and women, 18 years of age and over, living in private households in the continental United States. One of the questions asked was, "If you were desirous of securing liability or collision insurance on a car, what would you consider the most important thing to look for?" The answers were interesting: only 38 percent said "price," the cost of the insurance. But the vast majority named those functions directly related to the independent agent: (a) selection of a good company; (b) comprehensive coverage; (c) prompt claim settlements; (d) protection from cancellation; and (e) the reputation of the agent himself.

However, the role of the independent agent in the marketing process of insurance is frequently misunderstood or unknown. Here then are just some of the important functions he performs. He:

*Presents the need for coverage*

The independent agent interprets the clients' needs and determines the proper coverage to fit these needs.

*Explains the Coverage*

Few people understand insurance. The independent agent constantly educates his clients and the public about the need for insurance and the terms, conditions, and coverages of the policies he is providing. The education of his client can well be an important responsibility of the agent.

*Risk Management*

While this concept more often applies to larger business and commercial property risks, it has a real applicability to automobile insurance. Risk management involves identification of the hazards faced, evaluating them in terms of those to be insured and those to be assumed by the client, and reviewing the hazards for the purpose of reducing or eliminating their potential to ultimately cause loss. Every time the independent agent discusses coverages with the insured, he is practicing risk management. This applies when he is insuring an automobile and selecting the proper coverages for the circumstances. (For example, recommending that collision coverage be discontinued when the value of the auto has reduced sufficiently for the insured to assume the relatively small remaining risk.)

*Market Selection*

Having determined the insurance requirements of the client, the independent agent selects the appropriate coverage from the several companies he represents. The independent agent, being subservient to no one, is free to place the insurance needed by the client in a variety of companies. Thus, he can purchase just the right coverage for the circumstances his client has presented.

*Preparation of Policies and Endorsements*

The independent agent generally prepares the policy that he sells, or checks the accuracy of the policies prepared by the company. To do this he must employ policy raters—knowledgeable persons who can underwrite, classify and rate the risks presented to them. Also, every change made during the policy period must be processed. People move, buy new vehicles, revise coverage, and add coverage for youngsters coming of driving age. All of these, processed by endorsements to the original contract, must also be rated, prepared and delivered to the client.

*Reviewing and Updating Coverage*

The independent agent keeps his client's coverage current and up-to-date. He increases coverage to protect higher values, improves the limits of liability to better protect against loss, recommends the addition of new and pertinent coverages as they become available, and adjusts the policies and the coverages to reflect the changing needs of the client. Thus, the agent is responsive to the policyholder's particular needs.

*Advice and Counsel at the Time of Loss*

An agent's assistance is most important at the time of loss. The policyholder is often confused and needs help and guidance. The agent fills out the required loss and police reports, arranges for repair of the client's vehicle, advises the client as to what he should do in preparing his claim, calls the other party to get information not obtained by the client, and performs numerous additional services to assist his client through this trying experience. Moreover, claims of up to \$500 are sometimes processed by the agent himself. Finally, the independent agent helps his client to receive a fair and equitable settlement.

Mr. McGOWAN. The independent agent is deeply concerned with seeking meaningful solutions to automobile insurance problems. In the final analysis, the insurance business is a business of trust, principally because of the intangible nature of the insurance contract, and the independent agent who sells and services that contract indeed becomes the contract himself.

On that basis, I hope I am not being too presumptuous when I say there is probably no one in this room today who recognizes the need for change in our present system of compensating auto accident victims more than the independent insurance agent. However, it is just as true



that there are widely differing views in this room as to the degree and the means of bringing about that change.

For example, H.R. 7514, and other similar measures, call for complete abolition of our present tort liability system, in favor of a pure no-fault system. Moreover, these proposals in effect would turn over regulation of the automobile insurance business to the Federal Government.

House Concurrent Resolution 241, on the other hand, contains a number of favorable features, but it is repugnant to us in one major respect: For all intents and purposes, it proposes that the tort liability system be eliminated. Again, Mr. Chairman, our association simply cannot support any such sweeping change that would allow careless drivers to escape responsibility for their wrongdoings on our Nation's highways.

Instead, I would like to propose to you a program which our association earnestly believes can go a long way toward solving the present automobile insurance problems. Entitled "Motorists' Insurance—Protection Plan," we recommend it be given careful consideration by this subcommittee.

This plan is a comprehensive package of legislative proposals to be enacted at the State level. It is designed to provide speedy, automatic basic injury compensation for all auto accident victims, and to afford the greatest possible protection for the Nation's motorists by implementing stringent drive and highway safety measures and improving the present legal system. A copy of the program is attached to my statement as exhibit "B" and I respectfully request that it be included in the record at this time.

Mr. Moss. Without objection the item will be included in the record at this point.

(The document referred to follows:)

## EXHIBIT B

### MOTORISTS' INSURANCE—PROTECTION PLAN<sup>1</sup>

A comprehensive package of legislative proposals designed to be enacted by the States, aimed at providing speedy, automatic basic injury compensation for all auto accident victims, and providing for the greatest possible protection for the Nation's motorists by implementing stringent driver and highway safety measures and improving the legal system.

## SYNOPSIS

### I. HIGHWAY SAFETY

This section calls for more stringent laws aimed at promoting highway safety. These include: loss of license and fines for driving under the influence of alcohol or drugs; permanent loss of license for habitual offenders; severe penalties for pedestrians involved in auto accidents while under the influence of alcohol or drugs; uniform driver licensing standards, including periodic physical and mental exams and testing of drivers; mandatory use of safety belts and motorcycle helmets, with penalties for nonuse and nonrecovery for injuries incurred as a result of nonuse; establishment of an effective system to identify habitual offenders; mandatory driver education; adequate police to patrol highways and apprehend violators; implied consent laws; and periodic vehicle inspection.

<sup>1</sup> Adopted by the Board of Directors of the National Association of Mutual Insurance Agents March 14, 1971.



## II. THE LEGAL SYSTEM

This section calls for reforms of the legal system as it applies to auto insurance claims. These include: more judges and mandatory arbitration for all claims, under \$3,000; 25% limitation on contingent fees with the right of appeal; all contingent fees approved in writing by the client and filed with the court; strict control of the division of attorneys' fees; itemized statement of fees submitted to court and client by attorney; modification of Collateral Source Rule to allow other benefits received to be admissible evidence, including remarriage; eliminate contributory negligence as an absolute bar to recovery and substitute the Wisconsin Law; adoption of the Arkansas tortfeasor law; eliminate Ad Damnum; stiffer penalties for fraudulent claims and those who contribute to them; and adoption of various other practices and procedures to make the legal effort more efficient.

## III. THE REPARATIONS SYSTEM

This section provides for changes in the present system for compensating auto accident victims. Every auto liability policy shall include the following minimum benefits payable immediately regardless of fault: medical and hospital expense coverage—\$2,000 aggregate limit and optionalable deductible up to \$250; disability coverage—85% of gross income after 30 days, for 52 weeks, with a maximum of \$500 per month for \$6,000 total; uninsured motorists coverage—minimum \$10,000 per person and \$20,000 per accident; accidental death benefits—minimum \$5,000 if death results directly from the accident. Persons covered should include: named insured; members of the insured's family; guest passengers; and pedestrians. Coverage may exclude persons who contribute to their own injury or death through various unlawful means, and those entitled to Workmen's Compensation and similar statutory benefits. The insurer has the right of subrogation through mandatory inter-company arbitration. The insured has the right of rejection. The amount paid under uninsured motorist coverage may be reduced by the amount of benefits paid under other coverages. Insurers offering these automatic benefits may provide for subrogation and setoffs of amounts paid under such provisions against claims brought under the liability section of the policy. Broader coverages should be adopted as follows: up to 50% additional damages when medical and hospital expenses amount to \$500 or less; up to 100% additional damages when medical and hospital expenses exceed \$500; and higher standards allowed in cases of death and more serious injuries. Insurers should adopt immediate advance payment procedures, with credit allowed on subsequent recoveries by claimants and such payments not to be construed as an admission of liability. Loss of income damages recoverable should be defined so that juries can consider income tax savings when setting damage awards.

## IV. RATES AND POLICY CANCELLATIONS

This section calls for enactment of competitive rating laws, and for the following restrictions on auto policy cancellations: cancellation only for nonpayment of premium or the suspension or revocation of the driver's license or motor vehicle registration; specific notice required of the insurer's intention to cancel or non-renew; and the reasons for cancellation provided to the insured upon request.

## MOTORISTS' INSURANCE—PROTECTION PLAN

### I. HIGHWAY SAFETY

1. Mandatory license revocation and severe fines for those convicted of operating a motor vehicle while under the influence of alcohol or narcotic drugs.
2. Permanent revocation of driving privileges for those motorists found guilty of habitual moving traffic law violations.
3. Severe penalties for pedestrians involved in motor vehicle accidents while under the influence of alcohol or drugs.
4. Uniform licensing standards for all drivers, coupled with a requirement for periodic physical and mental examinations and testing of drivers.
5. Mandatory use of motor vehicle safety equipment, including safety belts and motorcycle safety helmets, with penalties for nonuse and provisions call-

ing for nonrecovery for injuries incurred which could have been prevented through use of such safety equipment.

6. Establishment of an improved system to identify those repeatedly involved in automobile accidents so that those found guilty of improper driving practices may be effectively dealt with.

7. Mandatory and meaningful driver education.

8. Establishment and maintenance of adequate police forces to patrol highways and apprehend violators.

9. Implied consent laws.

10. Periodic vehicle inspection.

## II. THE LEGAL SYSTEM

1. Relieve court congestion and delay by:

(a) providing a sufficient number of judges to keep abreast of the increase in judicial work occasioned by population, and

(b) employing a mandatory small claims arbitration system for all lawsuits which involve claims under \$3,000.

2. Regulation of the contingent fee system by providing that:

(a) the amount of such a fee should be strictly regulated by appropriate local court rule or legislation (i.e. a 25% limitation on contingent fees, with the right of appeal to the court for approval of a larger fee);

(b) every retainer on a contingent basis should be in writing in a fixed format and should be signed by the client;

(c) a retainer statement should be filed with the appropriate judicial authority by a retained attorney within a fixed number of days from the date of the written contingent fee retainer;

(d) there should be strict control of the division of fees between attorneys, based only upon work performed;

(e) upon completion of the claim or suit an attorney should file an itemized closing statement with the proper judicial authority and a copy thereof should be delivered to the client.

3. Modification of the Collateral Source Rule so that evidence of the nature and extent of all benefits and service received or to be received by the claimant as a result of the alleged injuries and damages sustained be admissible. Evidence of the remarriage of a surviving spouse should be likewise admissible in an action for wrongful death.

4. Eliminate contributory negligence as an absolute bar to recovery in an action for damages and provide instead that a claimant may recover if his negligence was not as great as the defendant's. The claimant's recovery should be reduced in accordance with the comparative degrees of fault by each party (Wisconsin SA 895.045). The following special verdict procedure should be established: Following a reasonable question and answer period, the jury should determine what percentages of total negligence was attributable to each party and the total amount of damages sustained by the plaintiff, thereby allowing the Court to reduce the total damages by those percentages (Wisconsin). Provide for contribution by joint tortfeasors to the plaintiff in proportion to the negligence attributable to each and provide certain safeguards and protections should any tortfeasor's contribution exceed his proportionate share or should one tortfeasor pursue a claim against another (Arkansas SA 34-1001 ff).

5. Eliminate Ad Damnum: That any pleading demanding relief in the form of unliquidated damages may only make a prayer for general relief and state that the amount claimed is within the minimum and maximum jurisdictional limits of the court.

6. Impose stiffer penalties upon those who intentionally make false or fraudulent claims for personal injury or property damage, upon those who intentionally assist in making of such claims and upon those who intentionally withhold information necessary to prompt, fair settlement of claims.

7. Provide for a more efficient use of the legal effort by adopting, in those jurisdictions which do not now have them or whose present rules are not as workable, those practices and procedures which limit the right to voluntary dismissals or nonsuits; the right to a split trial on issues of liability and damages; modification of appeal bond rules; summary judgment; mental and physical examinations of litigants; demands to admit the genuineness of documents or relevant facts; and offers of settlement, judgment and damages.

## III. THE REPARATIONS SYSTEM

1. Every automobile liability policy covering any non-fleet private passenger vehicle shall include the following minimum benefits payable immediately regardless of fault:

(a) medical and hospital expense coverage up to a \$2,000 aggregate limit and subject to an option deductible (applicable only to the named insured and resident family members) of up to \$250;

(b) disability coverage of 85% of gross income lost during a period commencing 30 days after the accident and continuing for 52 weeks, subject to a maximum of \$500 per month or a total of \$6,000;

(c) uninsured motorist coverage of at least \$10,000 per person and \$20,000 per accident;

(d) accidental death benefits of at least \$5,000 when the death occurs as a direct result of the accident.

2. Persons covered should include the named insured, members of the insured's family residing in the same household, guest passengers and pedestrians. The coverage may exclude persons who have injured themselves intentionally, were injured while intoxicated or under the influence of narcotic drugs, were operating the motor vehicle without a license or after suspension or revocation of license, were operating a motor vehicle in any race or speed contest, and were seeking to elude lawful apprehension or arrest by a law enforcement official; and any persons entitled to Workmen's Compensation and similar statutory benefits because of their injuries.

3. After the claimant has been paid his automatic benefits, his insurer should seek reimbursement from the party at fault (if any) or his insurance company. The issue of liability and reimbursement as between admitted insurance companies should be decided by mandatory inter-company arbitration, thereby reducing expenses and the burden on the courts.

4. The named insured should have the right to reject the automatic coverages (outlined in III, 1) as they apply to himself and members of his family residing in his household.

5. The amount an insurer is obligated to pay any insured under the uninsured motorist coverage may be reduced by the amounts of benefits paid to the same insured or his personal representative under the medical and hospital benefits, the income disability benefits and the accidental death benefits.

6. Insurers affording the automatic benefits (III, 1) may provide for subrogation and for setoffs of amounts paid under such provisions against claims brought under the liability section of the policy.

7. Insurers should be permitted—in fact, encouraged—to offer broader coverages than the minimum benefits outlined herein.

8. The following standard for determining damages for pain, suffering and inconvenience should be adopted for all motor vehicle accident cases:

(a) up to 50% additional damages when medical and hospital expenses amount to \$500 or less;

(b) up to 100% additional damages when medical and hospital expenses exceed \$500;

(c) in cases of death, permanent disfigurement, loss of limb, permanent loss of a bodily function and other exceptional circumstances, a court or jury may exceed these standards.

9. Insurers should adopt procedures to provide immediate advance payment in every meritorious case of all out-of-pocket expenses of the claimant as they accrue and provide immediate settlement of property damage liability claims separately from bodily injury liability claims arising out of the same accident, where final settlement of the latter is delayed pending medical treatment or other causes beyond the insurance company's control. Insurers making advance payments and settlements should be allowed to take a credit against any subsequent judgment recovered by the claimant or settlement made with him. Such payments and settlements should not be construed as an admission of liability in any subsequent judicial proceedings.

10. Damages recoverable for loss of income in liability cases should be defined so that juries can take income tax savings into account when they are called upon to set damage awards.



## RATES AND POLICY CANCELLATIONS

1. Competitive rating laws should be enacted to assure the public of the lowest possible price, best service, latest innovations in product and an available market. Rates would be effective when put into use, but they should be submitted to the state insurance commissioner for his information. In addition, the commissioner should approve reasonable rules and statistical plans adapted to each of the rating systems used and therefore used by insurers in recording and reporting loss and expense experience.

2. The following restrictions on the right of insurance companies to cancel automobile liability policies and combination policies affording liability and physical damage insurance covering private passenger automobiles owned by individuals or families should be adopted:

(a) after a reasonable underwriting period, the policy may be cancelled by the company during its term only for nonpayment of premium or the suspension or revocation of the driver's license or motor vehicle registration of either the named insured or any other operator residing in the household of the named insured or who customarily operates the automobile;

(b) specific notice requirements should be established with respect to the insurer's intention to cancel or non-renew the policy;

(c) the reasons for policy cancellation should be provided to the insured upon request.

Mr. McGOWAN. I would like now, Mr. Chairman, to concentrate on section III since it is perhaps the real heart of our proposed program. It provides for some significant changes in our present system for compensating auto accident victims, but with a minimal disruption of the important tort liability concept.

Under the NAMIA plan, every automobile liability insurance policy covering any nonfleet private passenger motor vehicle would include the following minimum benefits, payable immediately regardless of fault:

(1) Medical and hospital expense coverage up to \$2,000, subject to an optional \$250 deductible;

(2) disability coverage of 85 percent of gross income lost, commencing 30 days after the accident and continuing for 52 weeks and subject to a \$500 per month maximum or a total of \$6,000; Mr. Chairman, I would like to call attention to a typographical error. There is an error on our original statement, which says \$0 per month. It should read \$500 per month.

(3) uninsured motorist coverage of at least \$10,000 per person and \$20,000 per accident; and

(4) accidental death benefits of at least \$5,000 when the death is a direct result of the accident.

However, the policyholder would have the right to reject the automatic coverages listed above for himself and members of his family. Where a guest passenger is concerned, these coverages would not apply if they were provided under his own auto insurance policy.

On the other hand, as independent agents who come into daily personal contact with insureds who are victims of automobile accidents, we are well aware of the value of a system which would provide for immediate and automatic payment of basic personal injury benefits, regardless of fault.

Again, however, we do not propose that the purchase of such coverage by the policyholder be mandatory. Many of the proposals which are now, or will be, before this subcommittee seek to force all motorists



to purchase these first-party coverages as a condition to being permitted to operate a motor vehicle. By offering our limited no-fault plan on an either-or basis, we feel we are preserving the individual's freedom of choice. He is free to buy either an auto insurance policy with limited no-fault provisions, or he can reject the no-fault coverages and purchase the automobile insurance policy he has always had. Moreover, by making the no-fault coverage optional as well as limited, we feel we are also eliminating one of the greatest roadblocks to implementation of no-fault, and that is the resistance of plaintiffs' attorneys who feel that no-fault denies them and their clients the right to sue for recovery of damages.

The entire area of damages for pain, suffering, and inconvenience has been a major subject of debate for years, Mr. Chairman. Critics of such awards claim that there is a tendency to overdramatize and exaggerate automobile accident injuries in order to collect the largest sums possible.

While we agree that automobile insurance costs could be lowered if the recoverable damages for pain, suffering and inconvenience were in some way reduced, we cannot go along with those who would abolish such recoveries altogether. On the contrary, we believe that pain, suffering and inconvenience are a very real and important part of the determination of damages in personal injury cases and should continue to be compensable for all such victims.

A person who suffers such injuries as the result of the carelessness or intentional conduct of another, sustains a loss as real as the hospital and medical expenses he incurred. Money cannot replace a lost limb or eye, but there is simply no other measure yet devised.

Accordingly, we feel that some objective criteria should be established in determining this issue and it should be subject to reasonable limitations, especially in the less serious cases. Thus, our proposal suggests the following standards for pain, suffering and inconvenience be adopted for all motor vehicle accident cases:

Up to 50 percent additional damages when medical and hospital expenses amount to \$500 or less;

Up to 100 percent additional damages when medical and hospital expenses exceed \$500.

In cases of death, permanent disfigurement, loss of limb, permanent loss of a bodily function and other exceptional circumstances, these standards may be raised by the court.

Until a better means of determining such damages is conceived, we believe these standards will prove fair and equitable to all concerned, and will at the same time provide reasonable safeguards against those who would attempt to profit from such injuries.

Mr. Chairman, the broad package of proposals we have made here is offered as a balanced blending of the various points of view on how best to improve our existing automobile insurance reparations system. It encompasses what we believe to be the best features of many of the proposals being made.

A virtue of our program is that it will allow for a major step forward without burning our bridges behind us. Moreover, it allows for future testing so that we may observe and evaluate public acceptance without losing the desirable features of the present system and without being committed to an irrevocable course. We offer it as a sound,

evolutionary approach to improving the auto insurance reparations system.

And now, Mr. Chairman, I would like to offer to this subcommittee what our association feels is the most plausible method for implementing our program.

In the first place, it should be emphasized that we firmly believe that such a program can and should be implemented at the State level. We agree with Department of Transportation Secretary Volpe that the—

Sense of the Congress be subject to the admonition—that the Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation.

And that operation and regulation of the automobile insurance business should continue to be by the private insurance industry at the State level.

However, we disagree with the Secretary and others who apparently feel that a national pure no-fault automobile insurance system is both desirable and inevitable. To the contrary, we see no concrete evidence that such a system is in the best interest of all concerned, particularly the insurance-buying public. We believe that the public does not really want a virtual elimination of the present tort system in favor of pure no-fault. What it does want is change for improvement—and that is what we offer here today.

Accordingly, we suggest the following four-step approach for implementation of NAMIA's motorists' insurance—protection plan:

1. The Congress should adopt a concurrent resolution—along the lines of that proposed by Chairman Staggers but with certain appropriate modifications—expressing its intent that the States enact, no later than July 1, 1974, legislation establishing a private industry-administered and State-regulated automobile insurance reparations system built upon certain of the principles enunciated by the Department of Transportation study and embodying all of the features of the NAMIA program.

2. Interested organizations—such as the Council of State Governments, the National Association of Insurance Commissioners, and the various insurance associations, including our own—should be encouraged to work together to draft model legislation based on the sense of the Congress, as a guide to the States in developing their statutes.

3. The Department of Transportation should be directed to monitor State actions and to issue periodic reports analyzing the progress being made by the States.

4. On or after July 1, 1974, the Department of Transportation should submit to the Congress a complete report on action by the States in adopting such an automobile insurance reparations system by statute, so that the Congress may be in the best possible position to take whatever action it deems necessary and appropriate at that time.

In adopting a concurrent resolution, we suggest that the Congress give careful consideration to the general approach contained in House Concurrent Resolution 241, but with appropriate modifications that would reflect the approach we have outlined to you here today.

As President of the National Association of Mutual Insurance Agents, I pledge the complete support of my association in any and all endeavors to enact such a program in every State by 1974.

I urge, Mr. Chairman, that this pledge not be taken lightly. Our association made a similar promise some 17 months ago to the Senate Commerce Committee in connection with a proposal to establish the Federal Insurance Guarantee Corporation. In the intervening months, efforts by our association and others have resulted in passage of insolvency laws in 33 States to date, and we are continuing our efforts in the remaining State legislatures.

This proposed approach, Mr. Chairman, would in our opinion achieve the basic goal of establishing an improved automobile insurance reparations system throughout the country; but at the same time it would preserve the traditional roles of the States and the private insurance industry. Equally important, moreover, it would allow the Congress of the United States to fulfill its responsibility to the American motoring public.

Much has been said already in these hearings about the advantages of a Federal program over programs now being considered in many of the State legislatures, some of which will be enacted into law. Emphasis has been put on the efficiency and economy of uniformity, on the need for prompt action, and on the record of the States in not moving more rapidly in comparable undertakings such as workmen's compensation. Certainly there is something to be said on both sides of this argument, but in my judgment the record of the States, for the most part, is favorable when all factors are considered.

The Congress in its wisdom in 1945 passed Public Law 15, better known as the McCarran-Ferguson Act, which left the matter of insurance regulation to the States, subject to some restrictions. Since that time, the field of regulation has been changing, evolving phenomenon for the States, but while these changes have been taking place, the industry has continued to function soundly and properly. And the regulation of our industry by the States has maintained a level of effectiveness at least equal to that of any comparable industry.

On the other hand, during this same period, the Federal Government has had the opportunity to perform in the fields of medicare and welfare—both somewhat related to insurance. I would suggest with all respect that the Federal Government's performance has not proven superior in these fields.

On the subject of the Federal Government's performance in the regulatory field in general, I ask permission at this time to enter into the record as exhibit "C", a copy of a very perceptive article on the subject which appeared in the February 1971 issue of our monthly magazine *Mutual Review*.

Mr. Moss. Without objection, the item "C" will be received for the committee's reference at this point rather than being placed in the record at this point. It is not original to you, and after it is reviewed, it will be determined whether it will be set forth in the hearing record. But at the moment, it will be accepted for the review of the committee.

(The document referred to, entitled "The Federal Regulators: Old Liberalism vs. New Conservatism" may be found in the committee files.)

Mr. Moss. Proceed, Mr. McGowan.

Mr. McGOWAN. It was written by Mr. Louis Kohlmeier, Jr., who has been a Washington correspondent for the *Wall Street Journal*, and in 1965 received the Pulitzer Prize for national reporting. We



believe Mr. Kohlmeier shares our belief that the State approach to regulation of the insurance industry is infinitely more flexible and responsive to geographic and individual needs; an opportunity for research, for innovation, and trial and error.

The important thing is that if one of the 50 States undertakes an experiment and fails, it has not brought the whole country down with it. If, for example, the Massachusetts no-fault experiment is successful, we have a good foundation on which to build for other States. If it is not, we have the opportunity to adjust to the mistakes that may have been inherent in that program.

Here again the important thing is that the insurance industry has adjusted to variations of regulation, cost control and coverage design. The automobile policy itself, be it the family policy or the special policy, is really an engineering triumph as a contract designed to meet virtually all conditions of the 50 States. It does just that. My State of Massachusetts, for example, has had very limited statutory policy for 40 years, but it is still universal. In Massachusetts one buys a contract that takes care not only of the statutory requirement, but all the other requirements of the other States as well, including limited no-fault for the residents of Massachusetts.

Thus, the insurance industry, with its built-in flexibility, adjustment, and cushioning capacity, has designed programs that live in all States, and with relative economy and ease of performance.

You might very well ask why you are getting mail about cancellations, high cost, or improper attention to claims. We would not take this lightly. It is terribly important. As professional agents we have a greater concern than anyone for the welfare of our clients. But let me suggest that the insurance industry cannot isolate itself from the other things that are happening in this country. On balance, the criticism of our industry, considering its tremendous exposure to an enormous number of consumers, may very well be moderate. May I suggest that criticism aimed at drug companies, automobile manufacturers, which you heard some comments about this morning—the railroads, the Post Office—these too have been subject to heavy criticism, especially in recent years.

In my judgment it is good that Government does not work too quickly. The mandate of a dictator can be instantaneous. The deliberations of a Congress or a State legislature can and should be prudent, cautious, and conservative; above all, protecting the liberties of the people.

There is a further aspect of this question of State versus Federal regulation. The very possibility that the Federal Government may in effect take over the automobile insurance business can only be followed ultimately by the redirection of State insurance premium taxes to Washington. How long will the very philosophy that suggests Federal involvement in the automobile insurance business be satisfied not to tap premium taxes and fees now collected by the States?

In the year 1969, the States collected over a billion dollars in premium taxes. A report prepared by the Insurance Industry Committee of the State of Ohio for that year is hereto attached and made part of this statement as exhibit "D," with the permission of the chairman.

Mr. Moss. We will receive that for the record.

(The document referred to follows:)



EXHIBIT D  
STATE INSURANCE DEPARTMENT STATISTICAL DATA, YEAR ENDING DEC. 31, 1969—COMPILED BY THE INSURANCE INDUSTRY COMMITTEE OF OHIO

| States                    | Companies | Premium volume,<br>all companies,<br>1969 | Premium and<br>franchise taxes<br>certified, 1969 | Fees collected,<br>1969 | Total taxes<br>and fees | Funds spent<br>for operation<br>of department | Personnel                         |           |
|---------------------------|-----------|---|---|-------------------------|-------------------------|---|-----------------------------------|-----------|
|                           |           |   |   |                         |                         |   | Total<br>(including<br>examiners) | Examiners |
| Alabama.....              | 938       | \$758,696,861                             | \$14,901,281                                      | \$730,870               | \$15,632,151            | \$583,263                                     | 51                                | 12        |
| Alaska.....               | 535       | 94,260,111                                | 2,561,761   | 171,114                 | 2,732,875               | 1,156,449                                     | 10                                | 0         |
| Arizona.....              | 1,175     | 615,262,494                               | 9,364,192   | 598,036                 | 9,962,227               | 1,328,951                                     | 41                                | 0         |
| Arkansas.....             | 961       | 434,535,445                               | 7,969,534   | 401,250                 | 8,370,784               | 2,399,701                                     | 42                                | 9         |
| California.....           | 963       | 6,801,322,000                             | 126,142,594                                       | 4,197,151               | 130,339,745             | 3,744,018                                     | 285                               | 44        |
| Colorado.....             | 998       | 548,246,995                               | 12,202,257  | 422,058                 | 12,624,315              | 544,823                                       | 54                                | 18        |
| Connecticut.....          | 631       | 1,023,710,014                             | 24,731,899  | 650,557                 | 25,382,456              | 625,046                                       | 55                                | 25        |
| Delaware.....             | 705       | 181,011,953                               | 4,333,684   | 161,686                 | 4,495,370               | 114,800                                       | 14                                | 1         |
| District of Columbia..... | 781       | 237,032,700                               | 4,740,654   | 169,448                 | 4,910,102               | 2,390,000                                     | 24                                | 9         |
| Florida.....              | 973       | 2,013,029,477                             | 27,984,836  | 3,661,499               | 31,646,335              | 2,813,213                                     | 130                               | 9         |
| Georgia.....              | 942       | 1,662,620,074                             | 21,419,205  | 888,982                 | 22,308,187              | 1,553,471                                     | 57                                | 0         |
| Hawaii.....               | 450       | 1,206,485,024                             | 6,271,157   | 113,472                 | 6,384,629               | 1,111,929                                     | 12                                | 1         |
| Idaho.....                | 829       | 178,701,696                               | 4,583,584   | 247,928                 | 4,831,512               | 1,202,568                                     | 21                                | 0         |
| Illinois.....             | 1,353     | 4,102,636,832                             | 48,171,679  | 5,540,153               | 53,711,832              | 2,497,696                                     | 221                               | 59        |
| Indiana.....              | 1,206     | 1,725,000,000                             | 23,962,459  | 458,590                 | 24,421,049              | 1,330,465                                     | 57                                | 19        |
| Iowa.....                 | 1,909     | 950,405,139                               | 15,688,210  | 562,149                 | 16,250,359              | 593,832                                       | 50                                | 22        |
| Kansas.....               | 848       | 698,119,875                               | 10,417,143  | 469,833                 | 10,886,976              | 1,690,556                                     | 81                                | 7         |
| Kentucky.....             | 874       | 725,217,332                               | 12,380,272  | 308,720                 | 12,688,992              | 1,524,038                                     | 69                                | 9         |
| Louisiana.....            | 1,091     | 1,058,287,765                             | 18,119,297  | 250,731                 | 18,370,028              | 535,885                                       | 42                                | 8         |
| Maine.....                | 676       | 261,271,984                               | 4,216,709   | 295,161                 | 4,511,870               | 254,017                                       | 21                                | 2         |
| Maryland.....             | 801       | 1,134,103,209                             | 18,681,370  | 622,716                 | 19,304,086              | 968,115                                       | 94                                | 13        |
| Massachusetts.....        | 576       | 1,775,000,000                             | 37,774,181  | 1,414,917               | 39,189,098              | 2,851,955                                     | 366                               | 189       |
| Michigan.....             | 925       | 3,793,137,280                             | 44,114,479  | 3,303,331               | 47,417,810              | 1,516,326                                     | 117                               | 25        |
| Minnesota.....            | 1,020     | 1,151,528,463                             | 23,686,955  | 630,196                 | 24,317,151              | 2,584,005                                     | 55                                | 19        |
| Mississippi.....          | 1,048     | 482,022,812                               | 11,579,717  | 465,345                 | 12,045,063              | 1,156,901                                     | 21                                | 0         |
| Missouri.....             | 952       | 1,439,238,190                             | 23,899,278  | 901,468                 | 24,899,278              | 1,686,507                                     | 122                               | 30        |
| Montana.....              | 771       | 1,177,000,000                             | 4,578,134   | 353,566                 | 4,931,700               | 118,855                                       | 12                                | 1         |
| Nebraska.....             | 818       | 636,277,000                               | 7,442,000   | 518,388                 | 7,960,388               | 452,765                                       | 49                                | 14        |
| Nevada.....               | 844       | 136,597,738                               | 2,942,456   | 252,548                 | 3,195,004               | 1,205,052                                     | 19                                | 0         |
| New Hampshire.....        | 615       | 175,000,000                               | 3,904,805   | 324,041                 | 4,228,846               | 1,212,719                                     | 34                                | 8         |
| New Jersey.....           | 788       | 2,639,281,914                             | 34,690,168  | 1,585,192               | 36,275,360              | 1,319,896                                     | 193                               | 38        |
| New Mexico.....           | 889       | 245,291,468                               | 5,302,272   | 367,429                 | 5,669,701               | 1,402,404                                     | 28                                | 0         |
| New York.....             | 725       | 8,637,729,717                             | 110,231,465                                       | 8,534,364               | 118,765,829             | 8,744,948                                     | 744                               | 407       |

|                           |       |               |                  |                  |                  |                  |                  |                  |
|---------------------------|-------|---------------|------------------|------------------|------------------|------------------|------------------|------------------|
| North Carolina.....       | 710   | 1,265,960,645 | 29,056,252       | 1,053,652        | 30,109,904       | 1,037,697        | 82               | 18               |
| North Dakota.....         | 704   | 183,742,963   | 2,956,443        | 211,896          | 3,168,139        | 2,158,893        | 16               | 3                |
| Ohio.....                 | 1,107 | 3,385,186,012 | 55,168,111       | 1,731,759        | 56,899,870       | 1,978,913        | 91               | 26               |
| Oklahoma.....             | 1,073 | 700,000,000   | 19,996,130       | ( <sup>6</sup> ) | 19,996,130       | 1,358,570        | 43               | 16               |
| Oregon.....               | 818   | 810,437,189   | 11,038,045       | 511,243          | 11,549,288       | 391,660          | 35               | 4                |
| Pennsylvania.....         | 1,156 | 3,752,281,388 | 59,541,136       | 1,913,510        | 61,454,646       | 2,627,085        | 266              | 65               |
| Rhode Island.....         | 668   | 303,581,710   | 5,479,750        | 140,820          | 5,620,570        | 163,618          | 19               | 7                |
| South Carolina.....       | 771   | 627,453,497   | 12,972,093       | 865,341          | 13,787,434       | 875,617          | 87               | 10               |
| South Dakota.....         | 755   | 172,496,691   | 3,715,470        | 145,816          | 3,861,286        | 1,123,194        | 12               | 0                |
| Tennessee.....            | 889   | 1,097,743,596 | 20,936,661       | 863,409          | 21,806,070       | 543,827          | 51               | 8                |
| Texas.....                | 1,642 | 3,363,793,801 | 58,555,271       | 1,951,999        | 60,507,270       | 4,897,188        | 480              | 49               |
| Utah.....                 | 859   | 257,798,651   | 4,897,347        | 249,760          | 5,147,107        | 1,127,900        | 20               | 8                |
| Vermont.....              | 579   | 120,113,772   | 2,106,000        | 185,898          | 2,291,898        | 183,907          | 7                | 0                |
| Virginia.....             | 930   | 1,157,708,768 | 27,799,996       | 275,799          | 28,075,795       | 829,933          | 89               | 15               |
| Washington.....           | 871   | 1,011,870,142 | 17,053,458       | 440,367          | 17,493,825       | 1,388,212        | 103              | 14               |
| West Virginia.....        | 768   | 947,000,000   | 10,258,443       | 223,813          | 10,482,256       | 1,387,256        | 45               | 0                |
| Wisconsin.....            | 967   | 1,428,953,290 | 7,18,676,204     | 895,996          | 19,572,000       | 846,743          | 82               | 25               |
| Wyoming.....              | 771   | 83,182,040    | 1,813,182        | 187,323          | 2,000,505        | 213,415          | 16               | 4                |
| Total.....                |       | 1,090,959,679 | 51,427,090       | 1,142,465,101    | 50,248,617       |                  |                  |                  |
| territories:              |       |               |                  |                  |                  | ( <sup>6</sup> ) | ( <sup>6</sup> ) | ( <sup>6</sup> ) |
| Canal Zone.....           | 53    | 5,893,932     | 88,471           | 530              | 89,001           | 35,452           | 4                | 0                |
| Guam.....                 | 49    | 8,378,954     | 335,158          | 5,007            | 340,165          | 431,516          | 80               | 20               |
| Puerto Rico.....          | 260   | 181,088,026   | 3,169,739        | 125,825          | 3,287,564        |                  |                  |                  |
| Canada and provinces:     |       |               |                  |                  |                  |                  |                  |                  |
| Dominion of Canada.....   | 439   | 3,458,604,217 | ( <sup>6</sup> ) | 1,440,553        | ( <sup>6</sup> ) | 1,632,459        | 110              | 34               |
| New Brunswick.....        | 256   | 79,116,695    | 1,233,296        | 72,309           | 1,305,605        | 143,071          | 4                | 0                |
| Nova Scotia.....          | 221   | 83,430,965    | 1,772,142        | 26,537           | 1,798,679        | 18,357           | 3                | 0                |
| Ontario.....              | 561   | 1,499,507,015 | ( <sup>6</sup> ) | ( <sup>6</sup> ) | ( <sup>6</sup> ) | ( <sup>6</sup> ) | ( <sup>6</sup> ) | ( <sup>6</sup> ) |
| Quebec.....               | 736   | 1,177,308,799 | 24,905,599       | 630,643          | 25,536,242       | 590,852          | 45               | 16               |
| Prince Edward Island..... | 154   | 9,463,197     | 213,117          | 59,023           | 272,140          | 9,921            | 2                | 0                |
| Saskatchewan.....         | 284   | 107,731,709   | 2,266,159        | 178,383          | 2,444,542        | 150,809          | 6                | 2                |

<sup>1</sup> Does not include examiners' salaries and expenses.

<sup>2</sup> Includes examiners' salaries only.

<sup>3</sup> Includes examiners' salaries and expenses—domestic only.

<sup>4</sup> Excludes advance payment 1970 privilege tax—\$19,400,000.

<sup>6</sup> Estimated.

<sup>6</sup> Information unavailable.

<sup>7</sup> Excludes advance payment of premium tax—\$7,600,000.

Note: Information unavailable for Virgin Islands and Provinces of Alberta, British Columbia, Manitoba, Newfoundland.

*Funds spent for the operation of insurance departments, 1969*

|                          |               |                             |           |
|--------------------------|---------------|-----------------------------|-----------|
| 1. New York -----        | \$8, 744, 948 | 27. Kentucky -----          | \$524,038 |
| 2. Texas -----           | 4, 897, 188   | 28. Nebraska -----          | 452, 765  |
| 3. California -----      | 3, 744, 018   | 29. New Mexico -----        | 402, 404  |
| 4. Massachusetts -----   | 2, 851, 955   | 30. Arkansas -----          | 399, 701  |
| 5. Florida -----         | 2, 813, 213   | 31. Oregon -----            | 391, 660  |
| 6. Pennsylvania -----    | 2, 627, 085   | 32. District of Columbia--- | 390, 000  |
| 7. Illinois -----        | 2, 497, 696   | 33. West Virginia -----     | 387, 256  |
| 8. Michigan -----        | 1, 516, 326   | 34. Oklahoma -----          | 358, 570  |
| 9. Washington -----      | 1, 388, 212   | 35. Indiana -----           | 330, 465  |
| 10. New Jersey -----     | 1, 319, 896   | 36. Arizona -----           | 328, 951  |
| 11. North Carolina ----- | 1, 037, 697   | 37. Maine -----             | 254, 017  |
| 12. Ohio -----           | 978, 913      | 38. Wyoming -----           | 213, 415  |
| 13. Maryland -----       | 968, 115      | 39. New Hampshire -----     | 212, 719  |
| 14. South Carolina ----- | 875, 637      | 40. Nevada -----            | 205, 052  |
| 15. Wisconsin -----      | 846, 743      | 41. Idaho -----             | 202, 568  |
| 16. Virginia -----       | 829, 933      | 42. Rhode Island -----      | 163, 618  |
| 17. Kansas -----         | 690, 556      | 43. North Dakota -----      | 158, 693  |
| 18. Missouri -----       | 686, 507      | 44. Mississippi -----       | 156, 901  |
| 19. Connecticut -----    | 625, 046      | 45. Alaska -----            | 156, 449  |
| 20. Iowa -----           | 593, 832      | 46. Utah -----              | 127, 900  |
| 21. Minnesota -----      | 584, 005      | 47. South Dakota -----      | 123, 194  |
| 22. Alabama -----        | 583, 263      | 48. Montana -----           | 118, 855  |
| 23. Georgia -----        | 553, 471      | 49. Delaware -----          | 114, 800  |
| 24. Colorado -----       | 544, 823      | 50. Hawaii -----            | 111, 929  |
| 25. Tennessee -----      | 543, 827      | 51. Vermont -----           | 83, 907   |
| 26. Louisiana -----      | 535, 885      |                             |           |

Source : The Insurance Industry Committee of Ohio.

*Total revenue collected, taxes and fees, 1969*

|                          |                 |                             |                |
|--------------------------|-----------------|-----------------------------|----------------|
| 1. California -----      | \$130, 339, 745 | 27. Kentucky -----          | \$12, 668, 992 |
| 2. New York -----        | 118, 765, 829   | 28. Colorado -----          | 12, 624, 315   |
| 3. Pennsylvania -----    | 61, 454, 646    | 29. Mississippi -----       | 12, 045, 063   |
| 4. Texas -----           | 60, 507, 270    | 30. Oregon -----            | 11, 549, 288   |
| 5. Ohio -----            | 56, 899, 870    | 31. Kansas -----            | 10, 886, 976   |
| 6. Illinois -----        | 53, 711, 832    | 32. West Virginia -----     | 10, 482, 256   |
| 7. Michigan -----        | 47, 417, 810    | 33. Arizona -----           | 9, 962, 227    |
| 8. Massachusetts -----   | 39, 189, 098    | 34. Arkansas -----          | 8, 370, 784    |
| 9. New Jersey -----      | 36, 275, 360    | 35. Nebraska -----          | 7, 960, 388    |
| 10. Florida -----        | 31, 646, 335    | 36. Hawaii -----            | 6, 384, 629    |
| 11. North Carolina ----- | 30, 109, 904    | 37. New Mexico -----        | 5, 669, 701    |
| 12. Virginia -----       | 28, 075, 795    | 38. Rhode Island -----      | 5, 620, 570    |
| 13. Connecticut -----    | 25, 382, 456    | 39. Utah -----              | 5, 147, 107    |
| 14. Missouri -----       | 24, 899, 278    | 40. Montana -----           | 4, 931, 700    |
| 15. Indiana -----        | 24, 421, 049    | 41. District of Columbia--- | 4, 910, 102    |
| 16. Minnesota -----      | 24, 317, 151    | 42. Idaho -----             | 4, 831, 700    |
| 17. Georgia -----        | 22, 308, 187    | 43. Maine -----             | 4, 511, 870    |
| 18. Tennessee -----      | 21, 806, 070    | 44. Delaware -----          | 4, 495, 370    |
| 19. Oklahoma -----       | 19, 996, 130    | 45. New Hampshire -----     | 4, 228, 846    |
| 20. Wisconsin -----      | 19, 572, 000    | 46. South Dakota -----      | 3, 861, 286    |
| 21. Maryland -----       | 19, 304, 086    | 47. Nevada -----            | 3, 195, 004    |
| 22. Louisiana -----      | 18, 370, 028    | 48. North Dakota -----      | 3, 168, 139    |
| 23. Washington -----     | 17, 493, 825    | 49. Alaska -----            | 2, 732, 875    |
| 24. Iowa -----           | 16, 250, 359    | 50. Vermont -----           | 2, 291, 898    |
| 25. Alabama -----        | 15, 632, 151    | 51. Wyoming -----           | 2, 000, 505    |
| 26. South Carolina ----- | 13, 787, 434    |                             |                |

Source : The Insurance Industry Committee of Ohio.

Mr. McGOWAN. It shows in simple statistics what premium taxes mean to the States.

In summary, Mr. Chairman, our association does not suggest that the States should be permitted to go their merry way not meeting the automobile insurance problem with earnestness, promptness, and dili-

gence. We have said that they should be given until July 1, 1974, to enact reasonable and strong laws establishing an improved automobile compensation system or face the loss of their jurisdiction over that function. This is a fair proposition and we subscribe to it. We not only subscribe to it, we will join in the effort to see that it works.

May I suggest, Mr. Chairman, that an industry, a philosophy, a system of regulation and control which have existed for all these years and have served the people of this country reasonably well should not be abandoned without at least that much consideration? Given that period of time for experimentation by the States, for observation by this subcommittee for a greater flexibility and response by the industry, we believe a much more equitable, efficient, and responsive system will develop.

In our judgment it will be best if the impetus comes from the States. But if the States do not meet their responsibilities, then we would join with those who would come back to the Congress for action.

Mr. Chairman, as I said earlier, almost everyone agrees that change in our automobile insurance system is needed. The present system does not completely satisfy agents, insurance companies, State regulators, or State and Federal legislators. But above all, it does not completely satisfy the American motoring public. And after all, that is whom the system is designed to serve.

Until concerted action is taken by all of us, the public will not be properly served. We are calling for concerted action. Now is the time to get off dead center and start moving forward. We respectfully urge you therefore to give every possible consideration to the approach we have proposed to you today.

Thank you, Mr. Chairman, for allowing us to share with you our thoughts and suggestions on this most important subject.

(Mr. McGowan's prepared statement follows:)

STATEMENT OF ROBERT V. MCGOWAN, PRESIDENT, NATIONAL ASSOCIATION OF MUTUAL  
INSURANCE AGENTS

Mr. Chairman and gentlemen of the Subcommittee, my name is Robert V. McGowan of North Attleboro, Massachusetts. I am the owner of the R. V. McGowan Insurance Agency, Inc., in North Attleboro, which I founded and have operated since 1954. I am also the current President of the National Association of Mutual Insurance Agents, an organization of more than 18,000 independent property and casualty insurance agents with members in nearly all fifty states, and with headquarters in Washington, D.C. Accompanying me here today are our General Manager William A. Stringfellow, CPCU, and George G. Potts, our Director of Government Affairs, both from Washington, D.C.

The primary objective of our Association is to do all things necessary to help its members better serve the public. In our 40-year history we have demonstrated a willingness and ability to work for needed change within our industry. We have advocated positive steps for improving our product, to the end that it will provide the best protection at the lowest possible price to the insuring public.

It has been reported that nearly 70% of the property and casualty insurance which is written in the United States is handled by independent insurance agents. That figure suggests at least two important and related ideas: That we have almost constant contact with a large majority of the insurance-buying public; and also that we have first-hand feedback of their views on what is good and what is bad about our business.

I cannot overemphasize the influence that this knowledge has had in defining the position of our Association on the matter of automobile insurance reform legislation which is before this subcommittee, and which I am privileged to bring to your attention at this time.



Mr. Chairman, let me say at the outset that automobile insurance is no longer a product that one may choose to buy or not to buy; it has become a practical necessity. The advent of compulsory insurance and financial responsibility laws, plus the increasing incidence of automobile accidents and the larger judgments resulting from them, require the purchase of insurance to protect one's property and standard of living. It is little wonder then that the principal product sold by the independent agent is automobile insurance.

Earlier at these hearings and on previous occasions at Senate hearings there has been testimony challenging the need for the services of the agent in the marketing of automobile insurance. This proposition is completely unknowing and irresponsible. To fully appreciate the many and varied implications of the independent agent's involvement in the sale and servicing of automobile insurance, I ask for permission to insert into the record at this time as Exhibit "A," a description of just some of the myriad duties performed by the independent agent in looking after the insurance needs of his automobile policyholder.

I would call your attention to one of these areas which I feel is directly relevant to the subject under discussion here, and that is the contributions made by our members through their state/regional and national associations as well as individually, to programs concerned with safety and protection of the consumer. They have supported the leading safety organizations in the nation, including the National Safety Council and the Insurance Institute for Highway Safety, and annually distribute literally millions of safety messages to the many clients they represent. Many of our state/regional associations maintain speakers' bureaus and provide, without cost, a variety of programs on safety and insurance for service clubs and other groups. The independent agent is indeed a vital part of the significant endeavor to promote a safer America.

With these few introductory remarks, Mr. Chairman, I hope I have conveyed to the Subcommittee why the independent agent is so deeply concerned with seeking meaningful solutions to automobile insurance problems. In the final analysis, the insurance business is a business of trust, principally because of the intangible nature of the insurance contract, and the independent agent who sells and services that contract indeed becomes the contract himself.

On that basis, I hope I am not being too presumptuous when I say there is probably no one in this room today who recognizes the need for change in our present system of compensating auto accident victims more than the independent insurance agent. However, it is just as true that there are widely differing views in this room as to the degree and the means of bringing about that change.

For example, H.R. 7514, and other similar measures, call for complete abolition of our present tort liability system, in favor of a "pure" no-fault system. Moreover, these proposals in effect would turn over regulation of the automobile insurance business to the Federal Government. The National Association of Mutual Insurance Agents inalterably opposes these concepts.

House Concurrent Resolution 241, on the other hand, contains a number of favorable features, but it is repugnant to us in one major respect: For all intents and purposes, it proposes that the tort liability system be eliminated. Again, Mr. Chairman, our Association simply cannot support any such sweeping change that would allow careless drivers to escape responsibility for their wrongdoings on our nation's highways.

All of us are aware, I am sure, of the principal arguments put forth by the proponents of no-fault automobile insurance: Lower costs to the insurance buyer; faster payment of benefits; assurance of the availability of the insurance; relief of court congestion; etc. But I suggest, Mr. Chairman, that as commendable as these goals are, implementation of a *complete* no-fault system in no way guarantees their achievement. In fact, at this point in time at least, we see very little chance of all these goals ever being reached under such a system.

#### "MOTORISTS' INSURANCE—PROTECTION PLAN"

Instead, I would like to propose to you a program which our Association earnestly believes can go a long way toward solving the present automobile insurance problems and, at the same time, ultimately guarantee lower costs, faster payments, readily available coverage, and less crowded courts. The National Association of Mutual Insurance Agents has developed a program, entitled "Motorists' Insurance—Protection Plan," which we recommend be given careful consideration by this Subcommittee.

This plan is a comprehensive package of legislative proposals to be enacted at the state level. It is designed to provide speedy, automatic *basic* injury compensation for all auto accident victims, and to afford the greatest possible protection for the nation's motorists by implementing stringent driver and highway safety measures and improving the present legal system. A copy of the program is attached to my statement as Exhibit "B," and I respectfully request that it be included in the record at this time.

I would like now, Mr. Chairman, to go through each section of our proposed program and to explain how and why we feel this plan is capable of bringing about the desired changes in our present system.

#### SECTION I—HIGHWAY SAFETY

Section I calls for more stringent laws aimed at promoting highway safety. In the discussions and writings of those who propose no-fault systems, little if any mention is made of improved highway safety. Some cynically seem to consider the highway accident as an inevitable occurrence. There is no question, however, that a reduction in the number of highway accidents would go a long way toward curing many of our problems, such as the high cost of automobile insurance and the impact of auto cases on court work loads.

Independent insurance agents have long been concerned with highway safety, and we are convinced that meaningful programs to prevent highway accidents would have worthwhile results. For example, our Association several years ago actively worked to get so-called "habitual offenders" laws enacted in New Hampshire, North Carolina and Virginia. In the latter state, we are informed that many hundreds of habitual traffic offenders have been removed from the highways since the measure was passed. Hopefully, studies will be made that can reveal a significant drop in accidents directly attributable to the stringent law.

Mr. Chairman, we are convinced that much more could be done to improve highway safety if greater concentration were placed on the motorist as perhaps the major cause of highway accidents. Studies have shown alcohol and drug use as inordinate causes of traffic accidents. We maintain that driving is a privilege and not a right. Accordingly, our plan sets forth certain proposals to deal with the accident producers, and we will continue to support, as I outlined earlier, all meaningful legislation to protect the careful motorist from those who abuse their driving privilege.

Still other studies have shown that many drivers do not have the mental or physical capacity to operate today's high-powered vehicles. In addition, many vehicles are allowed to fall into such a state of disrepair as to make them a menace to others. We maintain that just as pilots and aircraft are given periodic examinations to assure air safety, motorists and vehicles should be inspected regularly to improve highway safety.

Automobile safety devices, such as safety belts and motorcycle safety helmets, have been shown to be extremely effective in the prevention of highway injuries and deaths. In this section of our plan, we propose and will support measures to require installation and mandatory use of such devices.

Finally, we are proposing measures which we believe will enable those persons charged with the enforcement of our traffic laws to be more effective.

Mr. Chairman, we do not claim that the proposals in Section I of our plan are the ultimate solution which will prevent *all* highway accidents. Much more can and should be done, for there is a definite need to improve the highways and the vehicles which we use. In the latter case, I believe there is legislation already referred to this Subcommittee. It is a subject of future hearings in which we are also vitally interested. In the meantime, our Association will concentrate its safety efforts on the *driver*, for we believe this is an area in which we can be most effective and an area which has been given far too little attention up to now.

#### SECTION II—THE LEGAL SYSTEM

Section II calls for reform of the legal system as it applies to automobile insurance claims. No-fault advocates often portray delay in the courts as to make it appear that every litigant in every jurisdiction must wait many years to have his case brought to trial. They contend that this delay would disappear if automobile accident cases were removed from the courts.

From various studies conducted to date, it can be concluded that such delay does not exist in every court and affect every litigant. Nevertheless, it is apparently a major problem in many metropolitan jurisdictions which handle cases involving a considerable percentage of the nation's population and, to that extent, can be considered a serious problem.

But simply removing automobile accident cases from the courts will not solve the problem of delay where it does exist. If such cases were removed and no other remedies made, any relief in the judicial workload would be temporary, since continued growth in population could produce more cases of other varieties to burden existing judicial manpower. Thus, it is apparent that courts and judicial personnel must be increased to meet population growth, just as utilities and other public services expand their facilities to meet new demands.

In addition, we recommend employing a system of mandatory arbitration of all lawsuits involving claims under \$3,000. Such a system has been in use in Philadelphia for some time now and has been found to successfully reduce court delay, has proved to be a less expensive procedure to the litigants, and has resulted in the equitable disposition of smaller cases. We feel its more widespread use where needed would prove equally successful in solving the court congestion and delay problem.

#### CONTINGENT FEE SYSTEM

A second area of our legal system in need of reform is the controversial contingent fee system. It has been said, and rightly so, that the contingent fee system provides the means through which a man of modest means may gain legal representation by a highly skilled and competent trial counsel. However, others contend that it is unfair for a portion of one's legal recovery to be shared with the lawyer who represented him.

In our opinion, the contingent fee has a place in our legal system, but because it is often misunderstood by the client and sometimes abused by the lawyer, it must be effectively regulated. Our plan proposes to do this by placing control of the size of the contingent fee and supervision of its use in the hands of proper legislative or judicial authority.

It also seeks to correct some of the misunderstanding by requiring fee arrangements and closing statements to be in writing, and by requiring the client to sign the agreement and be given a copy of the closing statement.

If such remedies are undertaken, we are reasonably certain they will bring about a meaningful reduction in the "cost" of the tort liability system.

#### COLLATERAL SOURCE RULE

There is no question that the Collateral Source Rule has a marked effect on the problem of automobile liability insurance cost. Actuarial studies indicate that elimination of double payment of certain items in the average personal injury claim would result in premium savings of between 15 and 19 percent. These savings are based on estimates that between 70 and 85 percent of the American population is covered by collateral benefits providing medical and hospital costs, wage continuation and the like. With this figure constantly rising, it means that at least seven or eight of every ten successful claimants will recover twice or more for some economic losses.

Here is an example of why the rule leads to inequitable results: The plaintiff is allowed to introduce evidence of the economic "loss" sustained as a result of his injury, such items as expenses for medical treatment, hospital and nursing care, rehabilitation services and "lost" wages. Even if all these claimed expenses have been completely paid to the plaintiff at the time of trial by insurance or other collateral sources, the defense is *prohibited* from introducing evidence of such payments. Thus, the jury is led to believe that the plaintiff had to pay these expenses personally or that he has been subjected to continuous financial worry because they are still unpaid at the time of trial.

Our proposal would permit the jury to be given *all* the facts about the case, including evidence of remarriage of a surviving spouse, which is now generally inadmissible in actions for wrongful death.

We have faith in the jury system and believe that, given all the evidence, an equitable determination of actual damages will be made. To this end, our plan proposes that the Collateral Source Rule be modified to allow the introduction of all evidence relative to the nature and extent of the benefits and services received or to be received by the claimant. If this is not done, we feel the cost to the insurance-buying public will become even more burdensome.



## CONTRIBUTORY NEGLIGENCE

Another change needed in our legal system in our opinion involves the rules of contributory and comparative negligence. In most states, contributory negligence of any kind on the part of the person seeking recovery for damages sustained, bars his recovery. In a few states, the court (or jury) is permitted to determine the percentage of total negligence attributable to *each* party. If, for example, the plaintiff is found to be 30 percent negligent, he may recover up to 70 percent of the total amount of damages sustained.

Of those states now employing the comparative negligence rule, the one used in Wisconsin, which has some 40 years of practical operation and judicial interpretation, is said to be preferable by legal experts. We strongly urge the adoption of the Wisconsin comparative negligence rule wherever practical.

## FRAUDULENT CLAIMS

Still another improvement called for in the legal system in our opinion is the imposition of strict sanctions upon those who intentionally make false or fraudulent claims for personal injury or property damage and upon those who assist them in such action.

Unfortunately, some persons look upon the personal injury reparations system as a means of making easy money. Although the number of false or fraudulent claims made annually is undoubtedly small in comparison to the total number of claims, they do constitute a serious threat to the integrity of our legal system. The dollars they take from the system are at the expense of the honest insurance-buying public and those whose personal injury claims are valid.

The only significant means which can be employed to combat the filing of false and fraudulent claims, it seems to us, is to provide stringent penalties for those who engage in this practice. Our Association's plan therefore proposes that where local laws are not adequate to cope with this problem, strong legislative measures be enacted.

## OTHER REFORMS

Finally, we believe that several other more technical improvements in the legal system should provide significant impetus to solving the problems of our automobile reparations system. The historical "ad damnum" clause—the means by which the litigant could be shown to be demanding monetary damages instead of some other form of relief—has given rise to much abuse and dissatisfaction and should be eliminated. It simply has no place in a modern legal system.

Also, those practices and procedures which provide for limitation of the right to voluntary dismissals or non-suits, the right to a split trial on issues of liability and damages, modification of appeal bond rules, summary judgment, mental and physical examinations of litigants, demands to admit the genuineness of documents or relevant facts, and offers of settlement, judgement and damages—these should be adopted in those jurisdictions which do not now have such rules or which have rules which are not as workable as those proposed here.

## SECTION III—THE REPARATIONS SYSTEM

Section III, Mr. Chairman, is perhaps the real heart of our proposed program. It provides for some significant changes in our present system for compensating auto accident victims. If adopted, in our opinion, it would assure speedy, automatic basic injury benefits for all automobile accident victims, but with a minimal disruption of the important tort liability concept.

Under the NAMIA plan, every automobile liability insurance policy covering any non-fleet private passenger motor vehicle would include the following minimum benefits, payable immediately *regardless of fault*:

(1) medical and hospital expense coverage up to \$2,000, subject to an optional \$250 deductible;

(2) disability coverage of 85 percent of gross income lost, commencing 30 days after the accident and continuing for 52 weeks and subject to a \$00 per month maximum or a total of \$6,000;

(3) uninsured motorist coverage of at least \$10,000 per person and \$20,000 per accident; and

(4) accidental death benefits of at least \$5,000 when the death is a direct result of the accident.



However, the policyholder would have the right to reject the automatic coverages listed above for himself and members of his family. Where a guest passenger is concerned, these coverages would not apply if they were provided under his own auto insurance policy.

It is claimed that a major problem exists with relation to the number of persons who are injured in motor vehicle accidents and receive little or no compensation for the economic loss they suffer. While we recognize the existence of some inequities in the present system, we are opposed to the elimination of the fault system and the loss of the concept of personal responsibility for fault in accidents that goes with it.

On the other hand, as independent agents who come into daily *personal* contact with insureds who are victims of automobile accidents, we are well aware of the value of a system which would provide for *immediate* and *automatic* payment of basic personal injury benefits, *regardless of fault*. This we have proposed in our plan.

Again, however, we do not propose that the purchase of such coverage by the policyholder be *mandatory*. Many of the proposals which are now, or will be, before this Subcommittee seek to force all motorists to purchase these first-party coverages as a condition to being permitted to operate a motor vehicle. Under such plans, no provisions is usually made for the responsible motorist who has adequately protected himself and his family against such losses through other sources of indemnity. There is no way for him to avoid purchasing what amounts to unneeded coverage. He is forced to pay another premium for it.

The plight of this "overinsured motorist" is further complicated under some "pure" no-fault plans which call for a collateral source setoff. With a setoff, the motorist who sustained medical and hospital expenses as the result of an auto accident would not recover those expenses under his "pure" no-fault automobile policy if, for example, they had been paid by his separate medical and hospital insurance policy.

The net result under these circumstances is that the automobile insurance policy becomes *secondary* instead of *primary* coverage. Presumably, this is the area where the proponents of a complete no-fault system expect to realize cost savings; in effect, it is simply a matter of *less coverage* being provided by one's automobile insurance policy for *less money*.

Furthermore, it seems to us grossly unfair to force a person to pay for first-party coverage under which he will not be able to recover. Such persons will actually subsidize those who do not carry additional insurance. Even in the absence of the collateral source setoff, it seems inconsistent to us for plans which are offered for the stated purpose of reducing the cost of automobile insurance, to force persons instead to buy protection they do not need.

Thus, we propose to give each policyholder the option to determine for himself whether the coverage offered is needed for his own protection and that of his family. He would not be forced to pay an additional premium for unneeded coverage. It should be noted that our proposal does not give the policyholder the right to reject the coverage available for the protection of guest passengers who are not otherwise covered.

#### PAIN AND SUFFERING

The entire area of damages for pain, suffering and inconvenience has been a major subject of debate for years. Critics of such awards claim that there is a tendency to overdramatize and exaggerate automobile accident injuries in order to collect the largest sums possible. And now many of the proposals which seek to "reform" the existing automobile accident reparations system call for a limitation of the right to recover such damages. It is even suggested by some that the right of recovery should be eliminated completely.

While we agree that automobile insurance costs could be lowered if the recoverable damages for pain, suffering and inconvenience were in some way reduced, we cannot go along with those who would abolish such recoveries altogether. On the contrary, we believe that pain, suffering and inconvenience are a very real and important part of the determination of damages in personal injury cases and should continue to be compensable for all such victims.

A person who suffers such injuries as the result of the carelessness or intentional conduct of another, sustains a loss as real as the hospital and medical expenses he incurred. He should not be denied recovery for the pain, suffering and inconvenience he has endured, simply because its elimination might lower

insurance costs. There is, of course, an element of uncertainty in deciding just how much a person has suffered, but this is also true of the entire damage picture when money is offered to people for their injuries. Money cannot replace a limb or repair a broken leg, but there is simply no other measure yet devised.

Accordingly, we feel that some objective criteria should be established in determining this issue and it should be subject to reasonable limitations, especially in the less serious cases. Thus, our proposal suggests the following standards be adopted for all motor vehicle accident cases:

Up to 50 percent additional damages when medical and hospital expenses amount to \$500 or less;

Up to 100 percent additional damages when medical and hospital expenses exceed \$500.

In cases of death, permanent disfigurement, loss of limb, permanent loss of a bodily function and other exceptional circumstances, these standards may be raised by the court.

Until a better means of determining such damages is conceived, we believe these standards will prove fair and equitable to all concerned, and will at the same time provide reasonable safeguards against those who attempt to profit from such injuries.

#### OTHER FEATURES

There are several other key features in this section which should be called to your attention:

Excluded from coverage are those persons who have committed certain specified acts in conjunction with the operation of the automobile at the time they were injured, such as intentionally injuring themselves, driving under the influence of alcohol or narcotics, operating without a valid license, etc.

Insurance companies are permitted—in fact encouraged—to offer broader coverages than the minimums we have stated here, and it is anticipated that healthy competition will provide a wide choice of higher limits first-party coverages for those who desire them.

After a claimant has been paid the automatic basic personal injury benefits, his insurance company may seek reimbursement from the party at fault (if any) or that party's insurance company, and the issue of liability and reimbursement between insurance companies should be decided by mandatory inter-company arbitration, thereby reducing expenses and the burden on the courts.

When insurance companies make advance payments and settlements to the insured policyholder, such payments and settlements should be credited against any subsequent recovery by the policyholder and should not be construed as an admission of liability on the part of the insurance company.

Loss of income damages should be defined so that juries can take income tax savings into account when they are called upon to set damage awards.

#### SECTION IV—OPEN COMPETITION

Two major areas of concern both within and without the insurance industry are dealt with in Section IV of our proposal.

While opinion within our own Association is still rather sharply divided on the question of "competitive" versus "prior approval" rating laws, the majority of our board of directors felt that insurance companies must be allowed a certain amount of freedom in the marketplace if the entire problem of automobile insurance cost and availability is to be solved. Thus, our plan calls for enactment—in those states in which it is warranted—of competitive rating laws in order to assure the public of the lowest possible price, best service, latest innovations and coverage availability.

It should be noted, however, that unlike some present competitive rating laws, our proposal requires that policy rates be submitted to the State Insurance Commissioner for his information and that the Commissioner approve reasonable rules and statistical plans which must be used by insurance companies in recording and reporting their loss and expenses experience.

It seems to us beyond debate that the state authority charged by law with the responsibility for regulating rates must have full and complete knowledge of the rates being used and of the loss and expense experience upon which such rates are based. He should have all this information readily at hand, without the necessity of sending examiners into company offices to obtain it. Nor should he be forced to tell inquiring citizens that he has no record of the rates being charged.

## POLICY CANCELLATIONS

A second area of concern is the well-publicized practice of automobile insurance policy cancellations. The NAMIA plan outlines what we believe to be a practical approach to this problem—one which more and more insurance companies are adopting: Following a reasonable underwriting period, the policy may be cancelled by the company during its term only for nonpayment of the premium and suspension or revocation of the driver's license or motor vehicle registration. This applies to either the policyholder or any other operator residing in the policyholder's household or who customarily operates the automobile.

Our proposal further provides for specific notice to the policyholder by the insurance company of its intention to cancel or non-renew the policy, and that reasons for such actions be provided to the policyholder upon request.

Mr. Chairman, the broad package of proposals we have made here is offered as a balanced blending of the various points of view on how best to improve our existing automobile insurance reparations system. It encompasses what we believe to be the best features of many of the proposals being made. Admittedly, it is perhaps not exactly what any one segment of our industry would like to have, but we feel it does offer an accommodation for everyone concerned.

A virtue of our program is that it will allow for a major step forward without burning our bridges behind us. Moreover, it allows for future testing so that we may observe and evaluate public acceptance without losing the desirable features of the present system and without being committed to an irrevocable course. We offer it as a sound, evolutionary approach to improving the auto insurance reparations system.

## IMPLEMENTATION

And now, Mr. Chairman, I would like to offer to this Subcommittee what our Association feels is the most plausible method for implementing our program.

In the first place, it should be emphasized that we firmly believe that such a program can and should be implemented at the state level. While we agree with Secretary of Transportation Volpe that the "sense of the Congress" is "subject to the admonition . . . that the Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation," we also maintain that continued operation and regulation of automobile insurance business should continue to be by the private insurance industry at the state level.

Moreover, we disagree with the Secretary and others who proclaim that a national "pure" no-fault automobile insurance system is both desirable and inevitable. To the contrary, we see no concrete evidence that such a system is in the best interest of all concerned, particularly the insurance-buying public. We believe that the public does not really want a virtual elimination of the present tort system in favor of "pure" no-fault. What it does want is change for improvement—and that is what we offer here today.

Accordingly, we suggest the following four-step approach for implementation of NAMIA's "Motorists' Insurance—Protection Plan":

1. The Congress should adopt a "Concurrent Resolution"—along the lines of that proposed by Chairman Staggers but with certain appropriate modifications—expressing its intent that the states enact, no later than July 1, 1974, legislation establishing a private industry-administered and state-regulated automobile insurance reparations system built upon certain of the principles enunciated by the Department of Transportation Study and embodying all of the features of the NAMIA program.

2. Interested organizations—such as the Council of State Governments, the National Association of Insurance Commissioners, and the various insurance associations, including our own—should be encouraged to work together to draft model legislation based on the "sense of the Congress" as a guide to the states in developing their statutes.

3. The Department of Transportation should be directed to monitor state actions and to issue periodic reports analyzing the progress being made by the states.

4. On or after July 1, 1974, the Department of Transportation should submit to the Congress a complete report on action by the states in adopting such an automobile insurance reparations system by statute, so that the Congress may be in the best possible position to take whatever action it deems necessary and appropriate at that time.



In adopting a "Concurrent Resolution," we suggest that the Congress give careful consideration to the general approach contained in H. Con. Res. 241, but with appropriate modifications that would reflect the approach we have outlined to you here today.

As President of the National Association of Mutual Insurance Agents, I pledge the complete support of my Association in any and all endeavors to enact such a program in every state by 1974.

I urge, Mr. Chairman, that this pledge not be taken lightly. Our Association made a similar promise some 17 months ago to the Senate Commerce Committee in connection with a proposal to establish the Federal Insurance Guarantee Corporation. In the intervening months, efforts by our Association and others have resulted in passage of insolvency laws in 32 states to date, and we are continuing our efforts in the remaining state legislatures.

Based on our recent successful experience with state insolvency legislation, and given this period of time within which every state legislature will have had at least one full regular legislative session to act on reform of the automobile insurance reparations system, I am confident that a favorable report can be made to the Congress by July 1, 1974.

This proposed approach, Mr. Chairman, would in our opinion achieve the basic goal of establishing an improved automobile insurance reparations system throughout the country; but at the same time it would preserve the traditional roles of the states and the private insurance industry. Equally important, moreover, it would allow the Congress of the United States to fulfill its responsibility to the American motoring public.

#### PRESERVATION OF STATE INVOLVEMENT

Much has been said already in these hearings about the advantages of a federal program over programs now being considered in many of the state legislatures, some of which will be enacted into law. Emphasis has been put on the efficiency and economy of uniformity, on the need for prompt action, and on the record of the states in not moving more rapidly in comparable undertakings such as Workmen's Compensation. Certainly there is something to be said on both sides of this argument, but in my judgment the record of the states is relatively favorable.

The Congress in its wisdom in 1945 passed Public Law 15, better known as the McCarran-Ferguson Act, which left the matter of insurance regulation to the states, subject to some restrictions. The field of regulation has been a changing, evolving phenomenon for the states, but I submit that the experience has been a dynamic one. From strict prior approval and bureau concepts, we have moved to relatively liberal rate-making practices, and to open competition, which appears to be growing in spite of what probably are temporary adversities in areas such as Florida.

While these changes have been taking place, the industry has continued to function soundly and properly. I believe we are now approaching a relatively satisfactory status in this field of rate regulation. I would not deny that there are areas where adequate rates are hard to gain and others where the state legislatures feel that they are too easy to obtain. That is the nature of democracy and this will be true whether it occurs at the state or the federal level. I suggest that it reflects a capacity of the industry—company, producer and regulator—to adjust to the times and the exigencies of the day.

On the other hand, during the same period, the federal government has had the opportunity to perform in the fields of Medicare, Medicaid and the welfare program—all somewhat related to insurance. I would suggest with all respect that the federal government's performance is not superior in these fields; that uniformity, monolithicism and hoped-for efficiency have not created a satisfactory product. On balance, one would have to say that state regulation has a better record in similar fields.

On the subject of the federal government's performance in the regulatory field in general, I ask permission at this time to enter into the record as Exhibit "C," a copy of a very perceptive article on the subject which appeared in the February 1971 issue of our monthly magazine, *MUTUAL REVIEW*. It was written by Mr. Louis M. Kohlmeier, Jr., who has been a Washington correspondent for the *Wall Street Journal*, and in 1965 received the Pulitzer Prize for national reporting. He is also the author of "The Regulators, Watchdog Agencies and the Public Interest," published by Harper & Row in 1969.



Mr. Kohlmeier's credentials give added emphasis to the point of view he has expressed in the article I have just cited. In observing that criticism of federal regulations is coming from both conservatives and liberals, Mr. Kohlmeier writes, "... the American Bar Association has told President Nixon that the Federal Trade Commission should be abolished if it cannot be improved. Senators Tower of Texas and Baker of Tennessee, both Republicans, have asked Congress to study whether the Interstate Commerce Commission should be abolished. Senator Mansfield of Montana, the Democratic majority leader, already has decided the ICC should be abolished and has said so on the Senate floor."

Mr. Kohlmeier also refers to the book, "The Greening of America," by Yale professor Charles Reich, which he says "singles out the regulatory agencies as prime examples of what's wrong with America. I am not sure I would go as far as Professor Reich," Mr. Kohlmeier continues, "but I of course share the view that federal regulation has not served the interests of consumers and, beyond that, it is my belief that regulation demonstrably also has not served the interests of industry or government."

To support his belief, Mr. Kohlmeier points out that the Federal Power Commission "for many years has been regulating the production and transportation of natural gas, and now some of the nation's largest cities apparently face a shortage of gas for winter heating."

He cites the Federal Communications Commission which "nearly 20 years ago adopted a national master plan for television broadcasting which has never been fulfilled in terms of its projection of operating TV stations."

He cites the Atomic Energy Commission which "has fallen far short of the goals Congress envisioned for peaceful uses of atomic energy."

Last, but by no means least, he draws a very descriptive picture of the development of federal regulation of transportation, which "is the oldest area of federal regulation and its climax is the Penn-Central bankruptcy proceedings, which are the grandest fiasco yet wrought by the regulators."

After you have read Mr. Kohlmeier's article, Mr. Chairman, I think you will better understand why we believe that the state approach to regulation of the insurance industry is infinitely more flexible and responsive to geographic and individual needs: an opportunity for research, for innovation and trial and error.

The important thing is that if one of the fifty states undertakes an experiment and fails, it has not brought the whole country down with it. If, for example, the Massachusetts no-fault experiment is successful, we have a good foundation on which to build for other states. If it is not, we have the opportunity to adjust to the mistakes that may have been inherent in that program.

Here again the important thing is that the insurance industry, even though it is a fragmented industry (under our laws it must and should be), has adjusted to variations of regulation, cost control and coverage design. The automobile policy itself, be it the Family policy or the Special policy, is really an engineering triumph as a contract designed to meet virtually all conditions of the fifty states. It does just that. My State of Massachusetts, for example, has had a very limited statutory policy for 40 years, but it is still universal. In Massachusetts one buys a contract that takes care not only of the statutory requirement, but all the other requirements of the other states as well. Each state probably has some peculiarities in its financial responsibility requirements, in its Assigned Risk plan mechanisms and in its method of rate regulation. But this industry, with its built-in flexibility, adjustment and cushioning capacity, has designed programs that live in all states, and with relative economy and ease of performance.

You might very well ask why you are getting mail about cancellations, high cost, or improper attention to claims. We would not take this lightly. It is terribly important. As professional agents we have a greater concern than anyone for the welfare of our clients. But let me suggest that the insurance industry cannot isolate itself from the other things that are happening in this country. On balance, the criticism of the industry, considering its tremendous exposure to an enormous number of consumers, may very well be moderate. May I suggest that criticism aimed at drug products, the manufacturers of automobiles, the railroads, industrial pollution (I say with respect and kindness, criticism of the way the federal government is run and particularly the Post Office)—these too have been part of the developments of the past decade.

Mr. Chairman, I am not trying to be facetious, nor do I mean to be unkind to other industries, but it is a simple fact that in the past 25 years this nation has gone through an unprecedented transition, brought on by an explosion of the economy and the population. For the insurance industry to have performed per-

fectly and to have avoided criticism during such a period would have been miraculous indeed.

I do not say that we have not had more criticism than we deserve. But here again, many of the problems have been taken care of. State after state has passed non-cancellation laws; and state commissioners have become extremely aggressive in protecting the rights of their constituents. So I say to you, gentlemen, that state control of insurance is working. Yes, it works slowly, but here again who is to say that the federal government works so rapidly? In my judgment it is good that government does not work too quickly. The mandate of a dictator can be instantaneous. The deliberations of a Congress or a state legislature can and should be prudent, cautious and conservative; above all, protecting the liberties of the people.

There is a further aspect of this question of state versus federal regulation. We don't need to take positions on revenue sharing to know that both the Congress and the Executive Branches of our government have for some years recognized that over-involvement of the federal government in local affairs (even though they sometimes have a national flavor) has not always proven wise nor efficient. Without regard to the revenue sharing program, it is evident that you gentlemen are apprehensive about adding to the intrusion of the federal government into state and local affairs. It is apparent that the taxing power of local and state government must be enlarged in some manner. The very possibility however that the federal government may in effect take over the automobile insurance business can only be followed ultimately by the redirection of state insurance premium tax to Washington. How long will the very philosophy that suggests federal involvement in the automobile insurance business be satisfied not to tap premium taxes and fees now collected by the states?

In the year 1968, the states collected over a billion dollars in premium taxes. A report prepared by the Insurance Industry Committee of the State of Ohio for that year is hereto attached and made part of this statement as Exhibit "D," with the permission of the Chairman. It shows in simple statistics what premium taxes mean to the states.

It also suggests how little of these funds are used for operation of state insurance departments. One might wish that more would be spent on this function. State insurance departments regulated our industry for a very economical cost of \$46 million in 1968. I suggest, Mr. Chairman, that the federal government seldom deals in figures of this minor magnitude. Yet it is a reasonable, historical fear that once the federal government becomes involved in such matters, the take-over of the states' right to tax insurance companies and the taxes themselves are bound to follow.

I suggest that if the federal government becomes involved in what is now handled by the state insurance departments, it will mean the usual regional offices, a panoply of federal civil servants, with all the cost and expense that go with them. I ask you, Mr. Chairman, can that be done for anything like \$46 million? We already have these dual roles being played in many departments. Shall we add to the complexity, the cost and the over-centralization which federal involvement in insurance would entail?

Now I don't suggest that the states should be permitted to go their merry way not meeting this problem with earnestness, promptness and diligence. We have said that they should be given until July 1, 1974, to enact reasonable and strong insurance laws establishing an improved automobile compensation system or face the loss of their jurisdiction over that function. This is a fair proposition and we subscribe to it. We not only subscribe to it, we will join in the effort to see that it works.

May I suggest, Mr. Chairman, that an industry, a philosophy, a system of regulation and control which have existed for all these years and have served the people of this country reasonably well should not be abandoned without at least that much consideration? Given that period of time for experimentation by the states, for observation by this Subcommittee for a greater flexibility and response by the industry, we believe a much more equitable, efficient, and responsive system will develop.

In our judgment it will be best if the impetus comes from the states. But if the states do not meet their responsibilities, then we would join with those who would come back to this Congress for action.

Mr. Chairman, as I said earlier, almost everyone agrees that change in our automobile insurance system is needed. The present system does not completely satisfy agents, insurance companies, state regulators, or state and federal legislators. But above all, it does not completely satisfy the American motoring public. And after all, that is whom the system is designed to serve.

Until concerted action is taken by all of us, the public will not be properly served. We are calling for concerted action. *Now* is the time to get off dead center and start moving forward. We respectfully urge you therefore to give every possible consideration to the approach we have proposed to you today.

Thank you, Mr. Chairman, for allowing us to share with you our thoughts and suggestions on this most important subject.

Mr. Moss. Thank you, Mr. McGowan.

Do I understand that the \$46 million quoted in your testimony represents the total cost of regulation in the 50 States of this Nation? That is a shockingly inadequate figure. If that is the total, this is a shockingly inadequate figure. It is no wonder that there is a public clamor of unbelievable proportions at this moment demanding that something be done.

\$46 million, and you say that that is responsible regulation? That is no regulation at all. We could not do it, and the States cannot do it for \$46 million.

Mr. McGOWAN. Mr. Chairman, I suggest to you that there is an unevenness in State regulation.

Mr. Moss. I would say there is a shocking lack of regulation in many States, and this occurs after they have had well over a half century to make some progress in doing a better job of regulating.

I would submit that that figure itself constitutes one of the strongest indictments that would be made against the State inadequacy in this field.

Mr. McGOWAN. I would suggest that also the Interstate Commerce Commission has spent much more than \$46 million regulating the railroads. Apparently this expenditure has not been—

Mr. Moss. Mr. McGowan, if you want to get into the railroad regulation field, this committee is the committee of the Congress which created the Interstate Commerce Commission back in 1870's. I know a great deal of the complexities of the problems that go before the State commerce commission, and I know also of the shockingly inadequate job being done by the railroad commissions and public utility commissions of the 50 States.

If you want to get into that kind of a comparison, I am as well prepared as any man I know of in the Congress to undertake it. I doubt, though, if you are.

Mr. McGOWAN. I agree with you, Mr. Chairman.

Mr. Moss. Let us get on to items more pertinent to the legislative assignment of this committee. I just couldn't pass over that detail of a total cost of 50 States of \$46 million which you characterize as—let me see how you use the term here—"for a very economical cost." An economy usually indicates that there is a prudent management and that the economy represent the efficient use of money, but an inadequacy is not economic.

Mr. McGOWAN. Mr. Chairman, please understand I am quoting a statistical fact. As a matter of fact, our association, both the national association—

Mr. Moss. I am shocked that an informed group of agents—and, I might say, probably one of your members is my agent and has been for many years—an informed group of agents could come up with a consensus that this represents responsible and economic regulation.

Mr. McGOWAN. Well, Mr. Chairman, rather than take that position, our association, both nationally and in the States, has long lobbied



for and worked for more adequate funds in the legislatures for the insurance departments.

I do not want you to get the impression we were taking the position that \$46 million is adequate for the departments. We do think they have done a remarkable job of regulation in spite of their handicap. But we are on record as having taken the position that there should be more money allotted in most States. There are some exceptions to that.

Mr. Moss. Well, I don't go into the matter of the adequacy of their regulation at this time, because I don't think that would be productive. Each of us has his own views on that as to how adequate or effective it is.

I can assure you, however, that I would not introduce legislation to bring the Federal Government into dispute were it not for the fact that followed a 2-year study, a very comprehensive study—the first one we have had. In your agency group you don't have a study that approaches the thoroughness of this. And I was the coauthor of the legislation creating this study, a study which we felt had to be made before we knew the full scope of the problem of automobile insurance.

I wouldn't have thought of moving without it and to me that represents a very prudent and cautious and conservative approach to legislating, to get all of the facts available before making any kind of a judgment.

But the facts there were so strong, so overwhelming that it compelled me then to take the next step, logically, and a step which, until his appearance before the Senate committee, I am confident, Secretary Volpe was prepared to urge upon this Congress. I think there was a sudden, last minute shift in the recommendation, but not entirely of his own making.

I think that is the consensus within the industry and on the Hill, that that was not entirely of his own making.

Again, the facts were leading him, a rather conservative man, to the conclusion that something had to be done now, something more than marking time.

Now, I would like to point out, I think, one inaccuracy in your statement where you talked about the Federal failures and the successes of the States. I believe medicaid is a part of the State patterned legislative limitations. It is not Federal. We assist in funding it, but it is a State operation.

Mr. McGOWAN. I recognize that, Mr. Chairman.

Mr. Moss. And I would say in my State of California there is some very agonizing review underway now about the legislature as to how well the State has done, and I think that is true of many other States. If so, if you want to point to medicare and medicaid as an example of the successes of the State Governor, I think many Governors hide their faces in shame over the failures they have experienced in that field rather than stand up and take the plaudits and applause of this statement here.

Mr. Eckhardt?

Mr. ECKHARDT. On page 13, where you set up NAMIA plan, are you not in a position to offer such insurance at the present time on a voluntary basis?



Mr. McGOWAN. Not specifically, Congressman. Of course, you have the option of buying medical payments in your present program, but other than that there is no specific immediate payment for injury and, of course, medical payments would not cover loss of wages.

Mr. ECKHARDT. But you could do that if the insurance industry wanted to extend that kind of benefit now under existing law, could you not?

Mr. McGOWAN. Not in the same concept, I don't believe, that we have here, Congressman.

Mr. ECKHARDT. Why not?

Mr. McGOWAN. Because in this particular case we are suggesting the immediate payment, regardless of fault in the accident to the injured or damaged party.

Mr. ECKHARDT. Can't you write that in a policy now if you desire to?

Mr. McGOWAN. I presume you could, but, obviously, no one has done this except in Massachusetts where the impetus came from legislation. I think it would require legislation?

Mr. ECKHARDT. Why?

Mr. McGOWAN. Well, apparently the industry has not been willing to follow this route because I have seen no instance where they have come up with any such plan.

Mr. ECKHARDT. Are you suggesting that legislation should require the offering of such a policy?

Mr. McGOWAN. I am suggesting that legislation should require that it be available on a select basis.

Mr. ECKHARDT. So it would require insurance companies to offer it?

Mr. McGOWAN. That is right.

Mr. ECKHARDT. Suppose it was offered, in many States you would also be required under the law to buy a certain amount of liability insurance and pay premiums on that, would you not?

Mr. McGOWAN. Well, the only existing plan I can quote for you is the one in Massachusetts, which, incidentally, was a producers' bill originally rather than an industry bill. All it required was the adding of so-called basic protection wording to the existing automobile liability policy.

There are not two policies and, actually there isn't any endorsement. It simply has been incorporated into the Massachusetts standard policy so that if you are injured, no matter where you are injured, if you are a Massachusetts citizen, a registered automobile owner, you would be covered under the basic protection plan up to the \$2,000 which is specified in the law.

However, if you injured someone in another State or in your own State who was not covered by the basic protection, a New York driver, for example, coming into Massachusetts, then the liability section of your policy would cover him just as it does now.

Mr. ECKHARDT. I fail to see how your suggestion would in any way reduce insurance premiums. As a matter of fact, it might increase them by having some overlapping coverage under the plan you suggest, plus the purchase of liability insurance, which you probably would have to take.

Mr. McGOWAN. Congressman, I think all along there has been a great deal of conversation about the money no-fault is going to save, I think I would agree there are only two possible ways of reducing the

cost of automobile insurance: either you must reduce the benefits to the public, or you must reduce the expenses of carrying the system.

Obviously, no-fault on one side does reduce the cost by reducing legal fees, but the reason we in Massachusetts opposed the no-fault concept was because of the sharp reductions to the public which, we believe, exist in H.R. 7514. We felt when the public discovered what they had, the image of the insurance industry, already bad enough in the public's eyes, with some merit, would become worse.

I suggest to you that my son, who is in college and who suffers the loss of his right arm up to his elbow, does not have a 70-percent disability, but he wanted to be a doctor and he is precluded from that for the rest of his life and would recover nothing under H.R. 7514 or under some of the other pure no-fault plans, except for his medical expense and rehabilitation expense. He didn't have any wages to get 80 percent.

So this, I think, is a critical shortage. This could happen to my wife, also. I am sure I could have an economic loss, as any husband would, if his wife was disabled and unable to perform all of the functions of taking care of her family.

But the measurement, outside of the medical expense, is primarily a percentage of her wages. She would recover nothing in that area.

We feel that is a sharp reduction of benefits to the public, and for that reason we opposed in our State the complete no-fault program and substituted a program which is not completely unlike the one I suggest to you today.

Mr. ECKHARDT. I have no further questions, Mr. Chairman.

Mr. Moss. I will waive the questions I have. I have some others, but I will waive them.

The committee will recess for 15 minutes and come back, at which time Mr. Richard Markus, of the American Trial Lawyers Association, will be our witness.

Thank you for your appearance.

The committee will stand in recess.

(A brief recess was taken.)

Mr. Moss. The committee will resume its proceedings. Mr. Markus.

## STATEMENT OF RICHARD M. MARKUS, PRESIDENT, AMERICAN TRIAL LAWYERS ASSOCIATION

Mr. MARKUS. Thank you, Mr. Chairman.

With the permission of the committee, I would like to offer the prepared statement I have submitted and make some attempt to summarize part of it and supplement part of it this afternoon.

Mr. Moss. Without objection, the full statement will be placed in the record and you may summarize.

Mr. MARKUS. Mr. Chairman, I appear before this committee on behalf of more than 25,000 members of the American Trial Lawyers Association. I know all too well that certain interests would rather that our voice not be heard on this subject. They have echoed and re-echoed the claim that no lawyer is credible when he exposes the fraud and deceit contained in some supposed reform measures—on the theory that lawyers are only interested in preserving their fees and their pocketbooks.

I would remind you that our association has traditionally fought as the people's advocate, the consumer's ally, the polluter's enemy, as the lawyer for the individual victim of our industrial society.

Some members of this committee will remember the vigorous support by our association for numerous active safety measures, including my own testimony before this committee last year in support of a bill by Congressman Moss, which would attack manufacturer indifference to safety—a program that necessarily reduces the number of cases and the legal fees available to our members. During the course of this testimony, I will outline our affirmative recommendations for reform, many of which will mean less legal fees for our members, but more equity and protection for the consumer.

By contrast, I charge that the principal supporters of the so-called no-fault proposals are insurers that conspire to make greater profits at the expense of every motorist. After initial opposition to the no-fault concept, some segments of the insurance industry changed their position virtually overnight and jumped on the bandwagon in a desperate last-ditch effort to preserve and improve their profit structure while they make a last-ditch effort to prevent true social reform. I submit that the no-fault fiasco has been foisted on the public by a misleading multimillion dollar public relations campaign, a part of which was presented by film in this hearing room, and that there is not and has not been any public "groundswell" for no-fault schemes. Instead, realistic complaints against underwriting practices, cancellation procedures, and rising rates are virtually extraneous to any of the no-fault concepts.

Let me state the five legislative goals of my association which relate to this subject. First, we seek affirmative social reform to help all victims of all accidents and injuries—a meaningful program of general national health insurance. Indeed, when such a program is adopted by this Congress, there will be little or no reason to discuss an automobile health insurance program called no-fault. I might interpolate by advising the committee that the DOT studies indicate that of all of the economic loss sustained by automobile victims, 53 percent is medical expense, and the statistics of the American Insurance Association in their studies indicate that 61 percent of all economic loss of automobile victims is medical expense. So I think that is a rather obvious consideration.

We see no justification for greater public concern over the drunken driver who sustains self-inflicted injuries, than for the hapless housewife who falls down the basement steps or the innocent cancer victim. We believe that such true social reform should be funded by the general population. It should not be supported by a regressive victim tax like no-fault insurance which takes money away from the innocent in order to pay benefits to the guilty. It may be worth noting that national health legislation would probably mean a major reduction in legal fees, yet we support it. Its most bitter opponents are those same insurance companies that are terrified by its potential impact on their profit structures.

Second, we continue to seek State legislation which would provide greater equity for the relatively innocent victims of auto accidents.



Thus, we have sought and continue to seek an elimination of the antiquated contributory negligence rules, and realistic liability insurance limits. We have sought and will continue to seek an elimination of the meaningless immunities that render drivers free from responsibility to their guests, family members free from responsibility to their loved ones, and governments free from responsibility to their citizens. It is most curious that the very insurance companies that complain about inequities in the present legal system have been the traditional antagonists who have lobbied against every one of those reform measures to help the innocent victim.

Third, we have sought and continue to seek greater efficiency in the administration of claims. Although court congestion is largely a local matter in certain key metropolitan areas, we favor arbitration, non-unanimous verdicts, and smaller juries in the less disastrous cases. We favor realistic quotas of judges based on population so that our courts can meet the staggering criminal docket and have some time left for the civil docket. We favor legislation that would encourage insurers to make early payments long before any lawsuits, and we support legislation that would impose burdens on the tardy insurer by making interest run on those unpaid obligations at an earlier time. Once again, we might note in passing that the insurers who pretend concern over delay and inefficiency in this system have offered little or no support to our legislative programs in these areas.

Fourth, we ask Government and industry to stop paying lip service to safety measures. The public is demanding real legislation that will rid our highways of drunken drivers—who, I might parenthetically point out, represent 50 percent of all auto deaths—require meaningful repeated operator examinations so that a driver's license is not a license to kill, and stiffen the backbone of courts by legislation that will require repeated traffic offenders to forfeit their licenses.

Finally, we seek greater economy and a realistic reduction in automobile insurance premiums. Insurers supporting the no-fault plan are infected with the virus of wishful thinking when they make unrealistic and unsupported claims about supposed premium reductions. We charge that there is no truly reliable actuarial study to support the claimed premium reductions; that there is good reason to believe that there would be major premium increases—and I can cite that to the committee, if they wish—and that any premium reductions obtained would be the result of massive reductions in benefits paid to innocent victims.

Instead, we ask for realistic measures that will reduce the frequency and severity of human losses and property losses from highway havoc. Automobiles can be designed to withstand a 10 mile-per-hour impact without any significant damage, in contrast to the \$320 damage that a 1971 vehicle sustains in a 5-mile-per-hour impact. Highway design for safety is not a textbook dream.

Might I interject that I think Congressman Moss' apt comment about the size of the budget for operation of insurance departments can be applied here. We have applied virtually nothing by way of funds toward the improvement of highway design compared to what we should be applying. Sensible titling laws can slash the frequency of auto thefts, essentially making these cars unsalable after stolen.



Although we have received some comfort from cooperation from part of the insurance industry in supporting these measures, we are sad to report that many insurers do nothing more than complain about the real source of rising insurance costs. Remember that close to 70 cents out of every insurance dollar goes to pay for sheet metal and glass, property damage—not flesh and blood, personal injury. Most no-fault plans do nothing to meet the property damage problem.

Neither legal nor insurance gymnastics will ever provide a lasting reduction in insurance premiums. Premiums can be cut only when we cut the losses, and that is the only humane way to approach that task.

Then why do we say that the no-fault proposals are a poor substitute for these reform measures? Why do we label them retreat rather than reform? In our view, what has been presented, S. 945 and H.R. 4994, are heartless. A man is worth more than the cost of putting him back together. He is not simply a machine that must be repaired so that it can be returned to the assembly line. It is morally wrong to say that an innocent victim must suffer the tragedy of a severed leg, a gouged out eye, or years of intractable pain without some compensation for his disability, disfigurement, dismemberment, and loss of enjoyment of life itself.

Senate bill 945 and House bill 4994 and H.R. 7514 would protect the insurance company from any responsibility for such losses. Not only do they destroy major individual rights, but they make the insurance company both judge and jury for automobile injuries. Almost 99 percent of the injured automobile victims would be denied any payment for those human losses. These bills strike hardest at the poor on welfare, the temporarily unemployed, the student, and the housewife. These worthy human beings would receive no compensation whatever for their lost earning capacity.

No-fault insurance would undermine the rights of a union member whose hard-fought fringe benefits will be pirated to reduce the costs for the insurer—and here I am referring to the bill before the committee—so that the union member pays premiums and receives virtually no benefits at all. These bills impose no penalty whatever on the drunk, the drag racer, or the speeder. Instead, they treat him with new honor and distinction while taking his payment from the rights of the innocent.

Nor can we endorse the administration's position reported by Secretary Volpe. His request for a nebulous sense of the Congress resolution, calling for some undefined legislation, and threatening some unstated Federal retaliation, deny the essence of any Federal Government. Further, to the extent that the administration appears to endorse alleged compromise no-fault legislation, it is asking us all to compromise with injustice. We see no reason to seek retreat instead of reform. We see no reason to seek a little injustice when we can have complete justice. We oppose no-guilt insurance that trades your rights for someone else's wrongs. We believe with no-fault insurance, you pay more and get less—less equity, less justice, less reparation for pain, suffering and economic loss. Only the guilty will get their money's worth.

Mr. Chairman and members of the committee, it is time that the public was told the truth about automobile insurance reform proposals. It is time that we identify reform and separate it from retreat. It is

time for liberals who truly believe in individual human rights to stand up and be counted. It is time for those who believe in individual accountability and responsibility to speak out.

Now, I would like to supplement the comments I made in this formal statement with some additional remarks. If I can, I would like to refer to a chart I made yesterday. This chart attempts to show where the premium dollar goes. (See chart and accompanying notes on p. 316.)

The first of the three circle graphs attempts to depict the distribution of the premium dollar under the tort system.

Now, I must say to the committee in the beginning that there is some discussion as to whether the claimants' lawyers received 7 cents or 14 cents or 17 cents. I have seen studies supporting all of those numbers, and they are not of great concern to me either way, and I am willing to accept any of those under that for my purposes. It is clear under the present system the victim receives 42 to 48 cents out of the premium dollar. Now, I would like to suggest to the committee that with the no-fault concept, the innocent victim will receive drastically less.

The American Insurance Association version, which has the economic impact closest to House bill 7514 and House bill 4994, has been analyzed by the American Insurance Association, and they have estimated that the insurer for its supervision, operation, and its maintenance costs, for its work, will require 43 cents of the dollar instead of 45 cents; that they are hoping for a 2-cent saving. The remaining money, which would be 57 cents, would be paid out.

Now, I am willing to assume, though it is inaccurate, that not one penny of that money goes to pay lawyers; that not one penny of that will assist any lawyer representing anybody getting his benefits. I think that is patently unlikely, but let us assume that for the purposes of this discussion; 57 cents then is to be paid out to automobile injury recipients.

The Department of Transportation study tells us that 45 percent of victims who are seriously injured are now receiving payment under the tort system. That means that the tort system finds 55 percent in the guilty category. That 45 percent, at the very most, are in the innocent category under the tort system. The DOT also suggests that seriously disabled people are more likely to make claims than less seriously disabled people, and they are more likely to participate in the insurance picture than less seriously disabled persons.

So, using that figure of 45 percent, we find that 45 percent of that remainder would be 25 cents, and that is what the innocent victim would get; 32 cents now goes to a new group of people who have not previously been compensated, those who, for convenience, I am describing as the guilty.

We might then turn to the present effort and experience in Massachusetts over 3 months. Now, I think we have to all have caution in reaching conclusions—and I am sure Governor Sargent will say that it is hard to make any final conclusions about anything from 3 months' experience. But those 3 months are, in my opinion, startling, because they demonstrate what at least seems to me to be a complete collapse of the purpose of that system. The purpose of a no-fault system, if it is ever adopted is to pay more people, pay more people perhaps less money, but to pay more people.

In Massachusetts they are paying half as many people as they did last year. There is something fundamentally wrong when they are under a system which does not consider fault and are paying half as many people as they did before. The net effect, according to the statistics released by Governor Sargent and reported in the New York Times last Saturday, is that 59 percent of that money is now going to the insurer, and the balance, which is 41 cents, is going to be divided among the recipients.

Recognizing that we have no way of knowing how it is being divided among the guilty and innocent, I am still attempting to make some allocation, and in accordance with the same allocation described by the Department of Transportation: 45 percent to the innocent, 55 percent to those not now receiving benefits. It means that in Massachusetts, if that proportion is true, the innocent victim is receiving 18 cents out of the dollar to pay for special damages, to pay for general damages, to pay for his entire loss.

There was earlier testimony, if the Chair please, from a man, whom I personally have met on a number of occasions and have been impressed with on a number of occasions, and that is Herbert Denenberg.

I would like to read to the committee an article written by Herbert Denenberg, professor of Wharton School of Finance and Commerce, not as Herbert Denenberg, Commissioner of the State of Pennsylvania. This article was published 4 months before he assumed his present position.

Despite a clearly unsatisfactory system, the prospects for sound and acceptable change seem all too remote. The radicals are intent on non-fault systems, often too clearly thought out and misrepresented to beleaguered politicians and a confused public. There may be some merit in non-fault systems, but many of the prominently considered examples, such as the Rockefeller plan in New York and the American Insurance Association's plan—have been intent on producing easily insurable perils, at the sacrifice of justice to the automobile victim. And these plans have been represented as panaceas, capable of producing fantastic cost savings with their disadvantages wrapped in the rhetoric of salesman and a snow-job, rather than logic and balance.

At the same time, the proponents of these plans, with their fixation on panaceas, ignore the reality of the total automobile environment, and the need to pay heed to related systems and problems, such as automobile design and repairability; highway safety and other aspects of loss prevention, and control; present methods of providing medical and legal care; automobile licensing and law enforcement, and automobile induced pollution.

The radicals by and large offer the promise of making a bad system worse, a march backward instead of forward.

Reference was made to the Puerto Rican experience. I must tell this committee that Professor Denenberg himself, as a professor of Wharton School, commented upon the total inapplicability of the Puerto Rican experience to any legislation anywhere else. In Puerto Rico instead of having 85 percent of the people insured with liability insurance—it is the ordinary experience in this country that 15 percent are not covered by liability insurance—in Puerto Rico approximately 15 percent were insured and 85 percent were uninsured.

In Puerto Rico there is a governmentally funded health care program as a result of the legislation that went into effect. They had a fantastic accident rate, greatly exceeding that which was recognized in any U.S. jurisdiction. They have an extremely low poverty level and, as one of the witnesses pointed out, nine-tenths of the victims in



Puerto Rico received nothing by any system of compensation; whereas the Department of Transportation studies showed that nine-tenths of the victims here receive compensation from one of the various systems that exist today, even if it is not from the tort system.

I will, if the committee will permit me, make a brief comment on the motion picture in which I am personally depicted. If nothing else, it eliminates the suggestion that lawyers are wealthy, since I am pictured in the same suit and necktie as I have here today. I am impressed by the fact that the proponents in this film did not ever discuss the reduction in damages. They only talked about the advantage of no-fault protection.

May I say to this committee at this time that my association is in favor of true no-fault protection; that is, if there were a system devised which would pay full loss to everyone, we are for it. But we are not in favor of the system that will drastically reduce the benefits to those people who we have now said are more entitled to compensation than others.

At present, our system says that there is one group more entitled to compensation than others, those whom you are calling innocent, and that they should be entitled to full compensation. I think that it is wrong to take that compensation from them in order to give some of it to the guilty.

Many of the instances described in the film have virtually nothing to do with no-fault considerations. Thus, there was a fellow who described the fact that he has a long, complicated court procedure to obtain full compensation, presumably for his general damages, which are really not involved in the discussion we have here.

There was a person who complained about cancellation and underwriting practices, which, I think, are real grievances, which are extraneous to this discussion, though they can be incorporated in a no-fault bill or any bill, for that matter.

There was a suggestion made in the film that we can't tell who is at fault, but I think that that flies in the face of the experience of anybody who has ever been active in this field. In at least 90 percent of the claims, I venture to say, that the issue of fault is easily and quickly decided. The main dispute is what should be the level of compensation. It is rare that the issue of who is at fault is the big issue. It is typical that it is trivial or nonexistent issue. The big issue is: What is the level and amount of compensation that is accorded for the damage that has been sustained.

This has been the study of various insurers when they weren't quite so anxious to promote this concept. I think it is the conclusion of virtually all lawyers who have occasion to work in this area. Instead, the studies from the Department of Transportation show that the public has no difficulty in determining who is at fault in at least 90 percent of the cases. And in the film we saw the people had no difficulty in saying who was at fault in virtually every case.

I appreciate the indulgence of the committee in permitting me to expand upon my remarks. I would certainly be most pleased to answer any questions, since the committee may well have some, and perhaps I can explain myself more completely in such questions.

(Mr. Markus' prepared statement follows:)



STATEMENT OF RICHARD M. MARKUS, PRESIDENT, AMERICAN TRIAL LAWYERS  
ASSOCIATION

Mr. Chairman, I appear before this committee on behalf of more than 25,000 members of the American Trial Lawyers Association. I know all too well that certain interests would rather than our voice not be heard on this subject. They have echoed and reechoed the claim that no lawyer is credible when he exposes the fraud and deceit contained in some supposed reform measures—on the theory that lawyers are only interested in preserving their fees and their pocketbooks. But may I remind you that our Association has traditionally fought as the people's advocate, the consumer's ally, the polluter's enemy, as the lawyer for the individual victim of our industrial society. Several members of this committee will remember the vigorous support by our Association for numerous active safety measures, including my own testimony before this committee last year in support of a bill by Congressman Moss, which would attack manufacturer indifference to safety—a program that necessarily reduces the number of cases and the legal fees available to our members. During the course of this testimony, I will outline our affirmative recommendations for reform, many of which will mean less legal fees for our members, but more equity and protection for the consumer.

By contrast, I charge that the principal supporters of the so-called "no-fault" proposals are insurers that conspire to make greater profits at the expense of every motorist. After initial opposition to the "no-fault" concept, some segments of the insurance industry changed their position overnight and jumped on the bandwagon in a desperate last-ditch effort to preserve and improve their profit structure while they make a last-ditch effort to prevent true social reform. I submit that the "no fault" fiasco has been foisted on the public by a misleading multi-million dollar public relations campaign and that there is not and has not been any public "ground swell" for "no fault" schemes. Instead, realistic complaints against underwriting practices, cancellation procedures, and rising rates are virtually extraneous to any of the "no fault" concepts. From reports and personal observations, I feel compelled to conclude that these forces have exerted influence in some of the highest quarters of our government.

Let me state the five legislative goals of my association which relate to this subject. First, we seek affirmative social reform to help all victims of all accidents and injuries—a meaningful program of general national health insurance. Indeed, when such a program is adopted by this Congress, there will be little or no reason to discuss an automobile health insurance program called "no fault." We see no justification for greater public concern over the drunken driver who sustains self-inflicted injuries, than for the hapless housewife who falls down the basement steps or the innocent cancer victim. We believe that such true social reform should be funded by the general population. It should not be supported by a regressive victim tax like "no fault" insurance which takes money away from the innocent in order to pay benefits to the guilty. It may be worth noting that national health legislation would probably mean a major reduction in legal fees, yet we support it. Its most bitter opponents are those same insurance companies that are terrified by its potential impact on their profit structures.

Second, we continue to seek state legislation which would provide greater equity for the relatively innocent victims of auto accidents. Thus, we have sought and continue to seek an elimination of the antiquated contributory negligence rule, and realistic liability insurance limits. We have sought and will continue to seek an elimination of meaningless immunities that render drivers free from responsibility to their guests, family members free from responsibility to their loved ones, and governments free from responsibility to their citizens. It is most curious that the very insurance companies that complain about inequities in the present legal system have been the traditional antagonists who have lobbied against every one of these reform measures to help the innocent victim.

Third, we have sought and continue to seek greater efficiency in the administration of claims. Although court congestion is largely a local matter in certain key metropolitan areas, we favor arbitration, non-unanimous verdicts, and smaller juries in the less disastrous cases. We favor realistic quotas of judges based on population so that our courts can meet the staggering criminal docket and have some time left for the civil docket. We favor legislation that would encourage insurers to make early payments long before any law suits, and we support legislation that would impose burdens on the tardy insurer by making interest run on those unpaid obligations at an earlier time. Once again we might note in passing that the insurers who pretend concern over delay and inefficiency in this

system have offered little or no support to our legislative programs in these areas.

Fourth, we ask government and industry to stop paying lip service to safety measures. The public is demanding real legislation that will rid our highways of drunken drivers, require meaningful repeated operator examinations so that a driver's license is not a license to kill, and stiffen the backbone of courts by legislation that will require repeated traffic offenders to forfeit their licenses.

Finally, we seek greater economy and a realistic reduction in automobile insurance premiums. Insurers supporting the "no fault" plan are infected with the virus of wishful thinking when they make unrealistic and unsupported claims about supposed premium reductions. We charge that there is no truly reliable actuarial study to support the claimed premium reductions, that there is good reason to believe that there would be major premium increases, and that any premium reductions obtained would be the result of massive reductions in benefits paid to innocent victims. Instead, we ask for realistic measures that will reduce the frequency and severity of human losses and property losses from highway havoc. Automobiles can be designed to withstand a ten-mile-per-hour impact without any significant damage, in contrast to the \$320 damage that a 1971 vehicle sustains in a five-mile-per-hour impact. Highway design for safety is not a textbook dream. Sensible titling laws can slash the frequency of auto thefts. Although we have received some comfort from cooperation by part of the insurance industry in supporting these measures, we are sad to report that many insurers do nothing more than complain about the real source of rising insurance costs. Remember that close to 70¢ out of every insurance dollar goes to pay for sheet metal and glass, property damage—not flesh and blood, personal injury. Most "no fault" plans do nothing to meet the property damage problem.

Neither legal nor insurance gymnastics will ever provide a lasting reduction in insurance premiums. Premiums can be cut only when we cut the losses, and that is the only humane way to approach that task.

Then why do we say that the "no fault" proposals are a poor substitute for these reform measures? Why do we label them "retreat" rather than reform? In our view, the Hart Bill is heartless. A man is worth more than the cost of putting him back together. He is not simply a machine that must be repaired so that it can be returned to the assembly line. It is morally wrong to say that an innocent victim must suffer the tragedy of a severed leg, a gouged out eye, or years of intractable pain without some compensation for his disability, disfigurement, dismemberment, and loss of ability to enjoy life itself. Senate Bill 945 and House Bill 4994 would protect the insurance company from any responsibility for such losses. Not only do they destroy major individual rights, but they make the insurance company both judge and jury for automobile injuries. Almost 99% of the injured automobile victims would be denied any payment for those human losses. These bills strike hardest at the poor on welfare, the temporarily unemployed, the student, and the housewife. These worthy human beings would receive no compensation whatever for their lost earning capacity. "No fault" insurance would undermine the rights of a union member whose hard fought fringe benefits will be pirated to reduce the costs for the insurer, so that the union member pays premiums and receives virtually no benefits at all. These bills impose no penalty whatever on the drunk, the drag racer, or the speeder. Instead, they treat him with now honor and distinction while taking his payment from the rights of the innocent.

Nor can we endorse the Administration's position reported by Secretary Volpe. His request for a nebulous "sense of the Congress" resolution calling for some undefined legislation and threatening some unstated Federal retaliation deny the essence of any Federal government. Further, to the extent that the Administration appears to endorse alleged compromise "no fault" legislation, it is asking us all to compromise with injustice. We see no reason to seek to retreat instead of reform. We see no reason to seek a "little" injustice when we can have complete justice. We oppose "no guilt insurance" that trade your rights for someone else's wrongs. With "no fault" insurance, you pay more and get less—less equity, less justice, less reparation for pain, suffering and economic loss. Only the guilty will get their money's worth. Does it matter who is at fault? I respectfully submit to the distinguished members of this committee and to the American people—you bet your life it does.

Mr. Chairman, Members of the Committee, it is time that the public was told the truth about automobile insurance reform proposals. It is time that we identify reform and separate it from retreat. It is time for liberals who truly believe in individual human rights to stand up and be counted. It is time for those who believe in individual accountability and responsibility to speak out. It is time for the real voice of the consumer to be heard.

Mr. Moss. Well, Mr. Markus, I find it very interesting and intriguing that you had no difficulty telling who is at fault. I do, and I find that Dean William Prosser of the University of California, Hastings College of Law, I believe, generally recognized as an authority on torts, has the same difficulty I have, and I would like to quote from Dean Prosser in a comment he made on the trial of automobile negligence cases. He said:

The process by which the question of legal fault and, hence, of liability in accident cases as determined in our courts is a cumbersome, time consuming, expensive and almost ridiculously inaccurate one. The evidence given in personal injury cases usually consists of highly contradictory statements from the two sides, estimating such factors as time, speed, distance and visibility, offered months after the event by witnesses who were never very sure just what happened when they saw it and whose faulty memories are undermined by lapse of time, by bias, by conversations with others, and by the subtle influence of counsel.

Upon such evidence a jury of twelve inexperienced citizens, called away from their other business, if they did have any, are invited to retire and make the best guess they can as to whether the defendant, the plaintiff, or both, were negligent, which is itself a wobbly and uncertain standard based upon the supposed mental processes of a hypothetical and nonexistent reasonable man.

European lawyers view the whole thing with utter amazement, and the extent to which it has damaged the courts, the legal profession, by bringing the law and its administration into public disrepute can only be guessed.

That is the end of the quote. I thought it most pertinent to your observations of having no difficulty in finding or assessing blame or fixing responsibility.

MR. MARKUS. May I comment on the remarks of Dean Prosser, whom I respect very highly?

Mr. Moss. Yes.

MR. MARKUS. There is no question that in some cases courts are determining virtually every issue, and very commonly whether the accident is the source or cause of the particular disability. That is probably more common than fault.

We are talking in that discussion about cases in court, and I feel I must remind the committee that the cases that are actually litigated represent far less than 1 percent of all of the automobile accident cases. This is largely because the fault issue is able to be resolved in well over 90 percent of the cases without court trials.

It is those cases which are left for the bitter, hard-fought situation that is a trial.

Mr. Moss. Well, now you make the statement here on page 6 of your statement that almost 99 percent of the injured automobile victims would be denied any payment for those human losses. These bills strike hardest on the poor, those on welfare, the temporarily unemployed, the student, and the housewife. Yet, just a few moments ago we had a very distinguished leader of one of, I believe, the most progressive labor organizations in this Nation and he made this statement:

In serious injury cases, families with incomes under \$5,000, which account for almost one-third of the U.S. families, recovered only 38 percent of their economic losses. Families with incomes over \$10,000, however, recovered 61 percent of losses, and those with college training recovered 64 percent. Yet, the low-income families are likely to be paying the highest premiums for this lack of protection.

He went on then to say that the findings of a New York Times study as to the assigned risk pools: the discrimination that is applied by the industry itself in determining whether or not a person is an



insurable risk, as far as they are concerned, without going into an assigned risk pool.

This is a finding, again, by, I believe, a fairly objective group that goes strongly contrary to what you have just said.

Mr. MARKUS. I don't think it does. If the chairman will permit me, I would like to explain again. I think there is a great deal of agreement as to what the raw data is, and there is a great deal of disagreement as to what it means. Sometimes there isn't enough agreement as to the raw data, but let us assume there is agreement as to the raw data.

Let me first explain why I arrive at this number of 99 percent. The present level of compensation for injured victims, that is, the triggering of the tort remedy, as was suggested in some of the questioning, is 70 percent permanent-partial disability.

It is my best estimate, based upon a review of the available information in my own State of Ohio as to the number of persons who have a 70 percent permanent-partial disability—and that is something that is determined for purposes of workmen's compensation benefits—that is less than 1 percent of the injured persons in industrial accidents.

We also know, from the Department of Transportation studies, the number of persons who have a disability that causes them to be away from work for 2 years, which would be the category of persons with a permanent-partial disability of 70 percent, represent two-tenths of 1 percent of the automobile victims. That is how I arrive at that number.

Now, with reference to the effect on the poor, I must explain why I say that the poor are really badly treated by this legislation. I know that that is not the intent of anybody, but I think that part of the problem is that we have to think about questions that may not have been originally in our minds.

First, the uninsured, the people who are not insured with first-party protection benefits, will typically be the people who are trying to avoid paying for insurance. They will be people in low economic brackets, the uninsured under the present system, and they will be the uninsured under the other systems. They are the ones who do not have first-party protection benefits and will not have tort benefits or first-party protection benefits.

Secondly, the bill that is presented provides that there will be payment of 85 percent of the wage loss. I assume this is predicated on the fact that people have income taxes, and there will be a deduction that relates in some way to income taxes. But there is no question that for the lower economic levels, the income taxes do not represent 15 percent of their gross income. Indeed, they typically represent little or nothing from their gross income. So I think that provision strikes at the poor.

Also, with reference to premiums, we must recognize that one of the major changes that occurs by any system that seeks to provide first-party benefits—and I think it was aptly stated by the president of Aetna who testified here—is that they will not only be rating on the basis of who is a bad risk for causing accidents but who is a bad risk for receiving benefits: Who has a large family; who is likely to have a great or large number of people in his car; who is the person to have the greatest economic loss.

I am afraid that certainly the family man in his station wagon is a bad risk under such a concept, whereas the hopped-up kid in the



hopped-up car is a relatively good risk, because there is little income loss, good recoverability, lower medical expense and typically fewer people in the car.

We change some of the concepts of who is a bad risk, and the consequences of that may well be that such persons will be obliged to be charged higher premiums.

Mr. Moss. I am not going to take up any more time for questions, but I do want to make this record very, very clear.

I think unnecessarily in your statement are numerous innuendos to the motivation of those who support.

As the principal supporter in the House, I want the record to bear unmistakably the fact that my support here comes only after we have funded a major study as objectively undertaken as any study of an industry ever made in this country. And on the basis of clear findings of that clear study, I offered an insurance bill, for which I have no apologies, not in response to insurers, not in response to any special interest of any kind in this country, but in response to a commitment I made myself after I introduced the legislation, to create the study, to follow up and to attempt to implement its findings, and I might add, with a full greater degree of fidelity than the Secretary of Transportation who sort of hedged on his findings. I don't intend to hedge on mine.

Now, you people had, through your association, two representatives on the Legal Advisory Committee of the DOT study, and I believe they were probably heard with a great deal of persuasiveness and had their opportunity to make their contributions; but on the basis of this study, this study fully supports the legislation I have introduced and the legislation which is before this committee for consideration.

I think an attack upon any of the reasons for this should go to the basic integrity of this study. If you can show that it lacks integrity, then I think you have given us some basis for questioning the wisdom of coming forward with these proposals. But in the absence of that kind of evidence, I think we have every reason to suppose that we are acting in response to responsible information, responsibly and objectively developed and on that basis will continue to press.

But I say this without any sense of denigration of your colleagues. I have had you before my committee before, back in the original period of auto safety legislation and product safety, and I certainly commend the position of lawyers that they took then. In my judgment, a more consistent position would be in support of this legislation today rather than in opposition.

Mr. MARKUS. Mr. Chairman, may I make it clear that I am not suggesting that the Chair or any member of this committee is affected by what I think are the principal pushing forces for this legislation.

Mr. Moss. No one pushed me, Mr. Markus.

Mr. MARKUS. I appreciate that. If you will permit me to explain. I feel that the national push in terms of public information has come from vested interests. I recognize this and, indeed, I approve of the extraordinary integrity that has been demonstrated by the Chair and other members of this committee in numerous matters, and I think the Chair knows we have been 100 percent with him.

In fact, I find it strange that we are in differing corners on this issue, as the Chair has already commented. One of us may be mixed up, and I suggest that both of us should think about it very carefully.

Mr. Moss. I have suggested an avenue of clarity and that is the integrity of the study itself.

Mr. MARKUS. Mr. Chairman, since you asked me to approach it on that basis, I feel I will. You pointed out that there were members of our association who were on the Legal Advisory Committee. I must tell the Chair that those two members were not permitted to make comments on virtually anything. The staff was only advising them of what conclusions were being made, and they were given virtually no chance to respond and had no input to that conclusion.

I have serious reservation as to the reliability of some of the parts of that study. Some parts are excellent, and some parts, I am afraid, are infected with a predisposition of some of the staff members who have opinions, too, and I don't criticize them for that. Everyone is entitled to opinions.

Mr. Moss. Would you then state that this study lacks objectivity and that it has a basic lack of integrity?

Mr. MARKUS. I would say that some parts of it lack objectivity and some parts of it are not what I would call a good statistical study.

Mr. Moss. Then I would invite you to present the evidence to refute the material contained in the study.

Mr. MARKUS. Unfortunately, I do not have the staff or funds to make such a study, but I can point out that the study, for example, reaches conclusions on the basis of interviewing 1,800 persons, one-twentieth of 1 percent of the disabled victims, and it concludes from that what the economic consequences are. Indeed, the Commission itself was very doubtful of the accuracy of many of their conclusions about those things because of their difficulty in getting sufficient data.

Mr. Moss. I am not going to go into the defense of the universe which might be projected for purposes of a statistical study, but I would say if 1,800 were used, it represents a far larger and, therefore, conceivably a far more accurate universe for the purpose of measuring than the average statistical study undertaken in the United States. Most of those which attempt to interpret the view of this Nation on every conceivable type of subject are made up of between 1,100 and 1,200 interviews and no more.

Mr. MARKUS. I appreciate that, Mr. Chairman. They are typically on the basis of carefully documented historical data as to the 1,100 or 1,200 persons. I don't believe that is the case here.

Mr. Moss. I believe you are misled. Believe me. I served on the oversight subcommittee of this committee when we made a study of rating systems, and when you tell me as to the perfect methods they employ and how this careful study goes on before they select a universe, let me disabuse you. That is not true, and we put out reports showing very clearly that it was not.

Mr. MARKUS. Then I can only say that I am sure you are aware of the difficulties in that type of study and reaching conclusions from it.

Mr. Moss. I may be, but I would accept 1,800 as a more reliable statistical sampling than the norm of 1,200 used by Gallup and others across the Nation.

Mr. MARKUS. I am particularly impressed by the study of 3 million by one auto insurer who asked the people questions and got many answers. I have no doubt that the entire process of taking polls and gathering data is a difficult one.

Mr. Moss. I spent many months learning about it.

The committee will have to recess for 15 minutes and then come back to finish up.

(A brief recess was taken.)

Mr. Moss. The committee will resume. Mr. Eckhardt?

Mr. ECKHARDT. I am interested in your chart there with respect to the Massachusetts no-fault 3-month experience. How did you derive that chart?

Mr. MARKUS. Congressman Eckhardt, we know that previous experience prior to the adoption of the new act in Massachusetts had about 45 cents being retained by the insurer and about 55 cents being paid out in some other fashion.

The information that was reported by Governor Sargent and was printed in the New York Times indicated that the amount of payments was reduced by 36 percent. I also took into account that there was a 15 percent reduction in the premiums. So that dollar is smaller than the bigger dollar on top, but it is still a dollar of premiums. Taking those two facts into account, the insurer was paying out only 41 cents instead of 55 cents.

One must then make some effort to divide the 41 cents. I indicated when I referred to the chart earlier that is not an easy task, because we don't have information from Massachusetts, so I am arbitrarily assuming it is roughly the same as the Department of Transportation suggestion as to how the innocent and noninnocent have been divided in the general population.

Mr. ECKHARDT. How do they determine innocent and noninnocent?

Mr. MARKUS. The Department of Transportation study said that 45 percent of the relatively seriously injured persons receive compensation from the tort system and that 55 percent of the relatively seriously injured motor vehicle victims receive no compensation from the tort system. So I am accepting that as the decision, for at least the relatively serious victims, as to who are guilty and who are innocent.

Now, the study also suggests that the relatively seriously injured victims clearly and consistently have a higher number of claims—and that is, I think, what everybody would expect—than the less seriously injured people; and, indeed, they also intend to recover in a greater number of cases. Simply the seriousness of their injury causes some settlement payment to them, even though they may not have been meritorious under the tort system.

So, if anything, the 45 percent is an overstatement rather than an understatement, because the people who are seriously injured will be receiving payment in some instances in which they would not be in the innocent category, whereas the other would typically not.

Mr. ECKHARDT. I am still troubled by this designation of the innocent and noninnocent. I have done some law practice myself and some of it has been in the quasi-criminal arena, like arbitration of discharge cases. Frankly, I think some of the innocent people I represented probably got fired and some of the guilty ones stayed on the job.

So it is even difficult for me to determine in trying the case myself who is innocent and who is guilty. It seems almost impossible to establish any meaningful criteria of innocence and guilt in a question of tort liability.



Mr. MARKUS. If I may suggest, using different terminology, one might say those who are not considered meritorious under the system will be meritorious under the first-party system.

I am simply saying those who did not receive payment will receive a payment under the first-party benefits system, and we must make some estimate of how many of those there are.

Mr. Moss. Would you yield?

Mr. ECKHARDT. I yield.

Mr. Moss. I am puzzled. I wonder if you would give a citation of where in the study you find these figures. As you stated it, you are saying that 45 percent recover.

Mr. MARKUS. That is correct.

Mr. Moss. Does that necessarily have anything to do with guilt or innocence? Maybe they didn't bother to prosecute the claim, or maybe they failed to recover.

Mr. MARKUS. If I may explain. First, I can find the reference rather quickly. At one place, though it is cited in a number of studies, in the conclusion of volume 1 of the "Economic Consequences of Automobile Injury" on page 3, it describes that 45 percent recover from tort claims.

Now, I think your point is a good one, and that is why I say that the 45 percent is, if anything, an overstatement, because the study also points out what common sense would tell us.

Mr. Moss. Where does it equate it with guilt or innocence?

Mr. MARKUS. It does not. I am saying you can use that phrase for those who are compensated now, or those who are not compensated now, and those who are meritorious and not meritorious. The study does say that those who are compensated for the seriously injured cases will probably be a larger proportion than those who are compensated for the less seriously injured cases, because, first, they are more likely to present their claims and, second, they are more likely to receive some payment simply because there is the threat of an extremely large exposure.

Mr. Moss. Well, let us say they could all have no-fault. The whole group you are talking about, the 100 percent that you break down into the 45 and 55 percent blocks, all could have no-fault.

Mr. MARKUS. The concept of the study by the Department of Transportation was that they were trying to determine what percentage of population was receiving payment under the tort system. They say that certainly no more than 45 percent are now receiving payment under the present tort compensation system.

Mr. Moss. I don't question that, but I am trying to find out where in the study the implication is made that the 45 percent is made up of innocent victims and 55 percent of the guilty victims.

Mr. MARKUS. I don't know that word was used, but that is the entire thrust of the study. This is the purpose of the study. Actually, I think I may be able to find a phrase similar to that.

Mr. Moss. That isn't supported by what you have told us.

Mr. MARKUS. Well, if the chairman please, I think it is manifestly obvious that if the tort system provided compensation to everyone, it would not be based on tort. Somebody is responsible for causing the instances.



Mr. Moss. Yes, but say 100 people went into court to recover and only 45 of them recovered. You wouldn't say that the other 55 were guilty, would you, of anything? What are they guilty of, bad lawyers?

Mr. MARKUS. I would say they were not entitled to compensation under the system as it now exists.

Mr. Moss. Does that then make them guilty?

Mr. MARKUS. Typically that is the reason. Remember, we are dealing, to start with, a very large number of single car accidents in which people themselves run into a tree. Now, those are people who are not entitled to compensation under the present system but would be under a first-party system. We are also dealing with multicar accidents where someone is responsible, as described in the film, and someone is not responsible. I submit that is a relatively clear distinction.

Mr. Moss. I think it would be more helpful if you give us the citation and we would have counsel review it.

Mr. MARKUS. With the chairman's permission, I would like to submit that later. I don't have the page and number at my fingertips, but I think I can find the information that the chairman requests.

(See p. 313 for previous reference to information requested and Notes to Exhibit on p. 317.)

Mr. Moss. Thank you, Mr. Eckhardt.

Mr. ECKHARDT. I don't have any quarrel with your classifying these persons as persons who would have recovered under the previous system or would not have, but I think the term "guilty" is a little pejorative in this sense.

I have known other lawyers whom I thought usually represent persons who were amongst the guilty. I used to envy them in that when they won a case they enjoyed the flush of victory and if they lost the case they were comforted by the feeling that justice has been done. It depends on what the rules are.

Mr. MARKUS. Apparently, if the committee preferred the choice of language of "not entitled to compensation under the present system," that would not disturb me. But I think there are rules for determining whether people are not entitled to compensation who are, whom we have for convenience called, "guilty."

For example, if I may suggest, when Mr. Keeton testified, he said people have "real" losses of money, but to me their human losses are their real losses, which were far beyond their economic losses. Perhaps the choice of language is not the best. We have to all choose language as best we can.

Mr. ECKHARDT. I would like to again look into that last circle there. Now, the total of the 23 and 18 is 41.

Mr. MARKUS. Correct.

Mr. ECKHARDT. Now, is that a 36 percent reduction from the top figure up there, or how do you derive that total of 41 percent recovery?

Mr. MARKUS. That is 36 percent reduction——

Mr. ECKHARDT. From 48?

Mr. MARKUS. No, from 55.

Mr. ECKHARDT. From 55?

Mr. MARKUS. Yes.

Mr. ECKHARDT. Let me see. Which is the 55 figure?

Mr. MARKUS. Everything that the insurer does not keep or pay to its own people.

Mr. ECKHARDT. Now, how do you then derive the 59 cents left to the insurer?

Mr. MARKUS. By subtraction.

Mr. ECKHARDT. I really don't see where you get the 41 percent figure.

Mr. MARKUS. May I suggest that it might be helpful if I could, since there seems to be some confusion about this—and perhaps I am not making myself entirely clear, though I wish I were—that I would be given an opportunity to submit an exhibit showing these things and forward to the committee an explanation of the manner in which they were arrived at.

Mr. MOSS. Would that be satisfactory to you?

Mr. ECKHARDT. I would like to ask unanimous consent that this be permitted and that also Mr. Dukakis be permitted to respond to these figures so that we could see what the two contentions are with respect to the Massachusetts system.

Mr. MOSS. Without objection, the request will be granted.

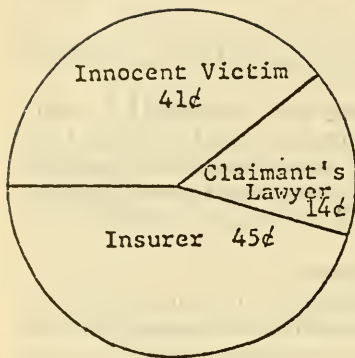
Mr. MARKUS. Now, I must say, in fairness, if you continued with that arrangement, the insurers would continue to make a fantastic profit. The net result, I am sure, will be in Massachusetts, that somebody will insist that the premiums be reduced and the additional amount be taken out of that profit.

Mr. MOSS. I believe the Governor indicated he felt that should be done.

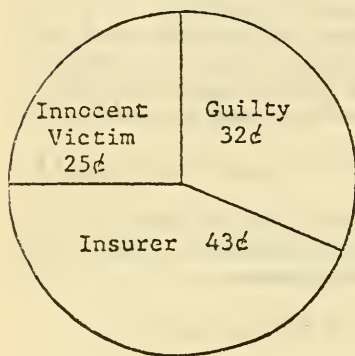
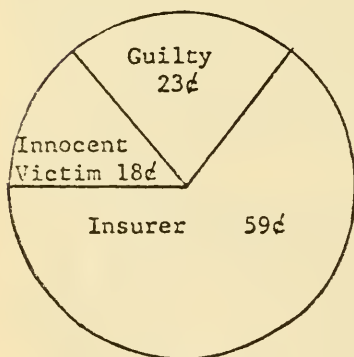
However, in response to the request granted Mr. Eckhardt, I think it would also be of great value to include the authorities upon which you rely for the figures you have used in each instance.

Mr. MARKUS. I intend to do that.

(The following information was received for the record:)

WHERE THE PREMIUM \$ GOES

TORT SYSTEM

"NO FAULT"  
(AIA VERSION)"NO FAULT"  
(MASS. 3 MONTHS  
EXPERIENCE)

## NOTES TO EXHIBIT

The Exhibit reflects the distribution of the premium dollar under specified conditions. For the "tort system" the payment of \$.55 per premium dollars is reflected in the actuarial studies "Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations: (New York: American Insurance Association 1968), Exhibit 1, Sheet 2". The "claimant's lawyer's" portion of \$.14 is derived as 25% of gross loss payments. See D.O.T., *Economic Consequences*, p. 48. Professor Keeton estimates the net paid to victims as 44% of the total premium, so the values suggested here are conservative. See D.O.T., *Final Report*, p. 51.

For the "no fault" (AIA version) the portion of the premium attributable to loss payments and insurer operations are reflected in the same study by the American Insurance Association referred to above. The division of payments between guilty and innocent victims correspond with the conclusion by the DOT that only 45% of seriously injured victims obtained any compensation from the tort system. DOT, *Economic Consequences*, pp. 3, 37. Seriously injured persons consistently made a higher percent of claims and a higher percent of serious injuries led to some payment. DOT, *Economic Consequences*, p. 49. No portion of the premium dollar is allocated in this example to claimant's lawyers, although it is presumed that some expense would be incurred for that purpose. For these reasons the share allocated to the innocent victim may well be overstated.

The last drawing depicts the Massachusetts experience. It is derived from the same data and considerations described above, together with the report by Governor Sargent as to loss payments for the first three months of 1971. See *New York Times*, April 24, 1971. Loss payments decreased 36%, though premiums had been reduced only 15%. Thus loss payments were 35.2% of the prior premium level (64% of 55%), or 41% of the new reduced premium level (33.5% divided by .85). That 41% can again be divided between innocent victims (45% of 41%) and guilty (55% of 41%). Again, the share of the innocent victim is probably overstated because no share has been allocated to fees for claimant's attorneys.

Mr. ECKHARDT. Mr. Markus, although I have found some fault with your figures, I find just as much fault with Governor Sargent's statement here that since the payments for injuries are reduced 36 percent and, therefore, premiums may be cut 25 percent to meet them, that this is necessarily good. It seems to me all this means is that there is a part of personal injury damages that may not be compensated for. Do you agree?

Mr. MARKUS. I agree 100 percent. As I said earlier, the Massachusetts experience, in my judgment, has been a failure, because in that State, where they hoped to pay more people on a no-fault basis, they are paying fewer people, and certainly that must make us very doubtful as to the entire approach.

Mr. ECKHARDT. Mr. Markus, you have indicated that your position is not crystallized, and after all, these hearings open up questions we all need to consider about this entire question. I assume you recognize that we lawyers are not always considered in the most friendly light by the general public.

Mr. MARKUS. I am afraid that is true.

Mr. ECKHARDT. I am afraid some of the testimony here may indicate that most people think about us as Samuel Johnson, who once said, "I hesitate to speak ill of any man, but that man is a lawyer." There is a little of that attitude abroad, I'm afraid. I am sure you must recognize it, and you must recognize there is a real problem here. To a certain extent, both lawyers and insurance companies and legislators are under the gun to try to devise some efficient way that persons who are injured in automobile accidents will receive reasonable payments to take care of their injuries and losses. I assume that you recognize that there are serious faults in our present system.



Mr. MARKUS. We have recognized them for years, Congressman Eckhardt. We have been trying desperately to correct a good number of them for years, and I must say, in fairness, that we have not been as successful as we would like to have been in correcting a good number of those defects. I refer to some of them in my statement.

Mr. ECKHARDT. May I suggest that I agree with you entirely concerning the national medical program. As a matter of fact, I am on a bill in the House on this proposal, but still, according to your own statement here, this would take care of approximately half—

Mr. MARKUS. A little over half of the economic losses, upward of 50 and 60 percent.

Mr. ECKHARDT. What would you think about some kind of no-fault insurance taking care of all or a part of the additional half so long as such no-fault insurance did not operate as the exclusive method of remedy and did not cut off the possibility of a tort action?

Mr. MARKUS. As I tried to explain earlier, we are not opposed to the no-fault concept. We are not opposed to the concept that people should have full payment. We are only opposed to the concept that we decrease the payment to the innocent victim.

For the view that there be some protection, I frankly have to agree with the gentleman from the United Auto Workers that the medical expense should be taken out of the story completely and should be put into a national health program, which is most of the economic loss. By "most" I mean 50 to 60 percent. The wage loss, as nearly as I can recall, is about 35 percent. There are some other factors that are economic loss.

I am not opposed to the concept of first-party orientation, no-fault. Indeed, I think we have been proposing it long before any of the people who have been discussing it now. This has been part of our standard legislative approach for years.

Mr. ECKHARDT. Then what sort of no-fault system would you advocate?

Mr. MARKUS. I think the answer depends in large part upon what we think is the first step. We think the first step is the national health insurance law, because that makes a drastic change in this entire story, and it should.

Mr. ECKHARDT. That would, of course, reduce premiums, because, if sufficiently extensive, it would take care of most of the medical involved in the insurance coverage, would it not?

Mr. MARKUS. Right. Now, we have been proposing in the State legislature the adoption of temporary disability laws similar to that used in New York, New Jersey, and California. I am sure the chairman is familiar with that. It provides wage replacement for people who are injured or ill or for any reason are unable to continue in their service and is a supplement to the social security law, which has a similar provision at a later stage.

Mr. ECKHARDT. Now, recognizing that the Puerto Rico law deals with an entirely different population, as you pointed out, nevertheless, as a structure, as a piece of statutory mechanism, what do you think about that?

As I understand what has come before us—and, frankly, I don't know the law in detail, and perhaps it would be better to talk hypothetically—but the kind of law I am thinking about is one that would

afford some limited coverage, and after that limited coverage was paid under a no-fault system, one could bring an action alleging tort liability and recover on the same basis as now available in a tort suit but would have the amount of the injury reduced by the amount received under the no-fault system.

Mr. MARKUS. That doesn't bother me at all.

Mr. ECKHARDT. That doesn't bother you at all?

Mr. MARKUS. No. The question I have to ask is: Is there any restraint on the ability to obtain compensation on the dismemberment, disfigurement, all of the damages that are of human loss?

Mr. ECKHARDT. The way I posed it, I supposed it would be no, because I thought of a tort liability case after the no-fault portion has been exhausted.

Now, you also testified here that about 70 cents out of every insurance dollar goes to pay for property damage. We have had some testimony here which would indicate something in the neighborhood of half went for that purpose, and we, frankly, have not broken down some of the additional figures.

No. 1, I would like to have your method of calculation there, and I would like to ask unanimous consent, Mr. Chairman, that the record be open for his calculation with respect to that figure.

Mr. Moss. Without objection, the record will be held at this point to receive the requested material.

(The following information was received for the record:)

#### JUSTIFICATION OF ESTIMATED PROPERTY DAMAGE PERCENTAGE

For the period 1959-68 the Senate Antitrust and Monopoly Committee found the following earned premiums for auto insurance (in billions): Property Damage Liability 15.2; Collision 17.6; Comprehensive 9.4; Bodily Injury Liability 37.0; Total 79.2. Thus, coverage relating to vehicle damage represented 53.4% for the average of that past time interval. More recently the percent related to vehicle damage has increased. Thus in the October, 1970 issue of *Trial Magazine*, Vestal Lemmon (President, National Association of Independent Insurers) said (at p. 56):

"The typical, current package of complete auto coverage indicates that almost two-thirds of the premium dollar is spent for car damage coverages, and only one-third for injury coverages."

Subsequent oral estimates from prominent insurance industry officials indicate that the auto damage portion of the premium is rapidly approaching 70% and has reached or passed that allocation in some areas.

Mr. MARKUS. I would start by saying that I think I know the testimony to which you are referring, and I believe it was a guesstimate by the witness who was before you and not intended to be a precise statement.

Mr. ECKHARDT. That is true. There was one of the figures that was not broken down, so his statement would have to be without knowing precisely how much of that figure went into the property damage and how much went into the personal injury.

Mr. MARKUS. I can, I think, answer your question in part at this stage.

Mr. ECKHARDT. Go ahead.

Mr. MARKUS. I have personally interviewed the chief executive, or next in line, of at least a half dozen of the major national casualty insurers at their home offices. I asked of them that specific question: What is the percentage of the total premium that has to do with property damage as distinguished from personal injury.

The numbers I have received have been typically in the character of roughly two-thirds for property damage and going up, because the property damage part is going up much faster than the personal injury. The high damage to cars, the high repair cost, the relatively high theft rates in some areas are making this go up faster than even the medical bills.

MR. ECKHARDT. Now, let us go back to my previous question about my hypothetical Puerto Rican plan. Suppose it was suggested that property damage also be included in the no-fault nucleus of insurance coverage. Would you find that acceptable or not acceptable?

MR. MARKUS. I have no problem with that. That doesn't disturb me. Again, one thing we must recognize, I think, in fairness to the total answer, is that if the coverage is to the exclusion of a tort remedy for property damage—and I assume that would be inherent in what you are saying; maybe I am in error—if that is so, then there will be some property damage that will not be recovered, typically the \$100 deductible, or something of this sort.

To that extent, it is philosophically disturbing to me, but I must say it is not monetarily disturbing to me, because we are talking about relatively small numbers.

MR. ECKHARDT. That is right, and in this area perhaps it is more valuable to have certainty than to have the possibility of absolute recovery.

I would not say that that was true in the case of bodily injury, because there is such a wide range of bodily injury that I think the difference between partial relief and complete relief is vast in that area.

MR. MARKUS. I would agree.

MR. ECKHARDT. I merely suggest this because I think it might also afford a means for creating an incentive for safer automobiles and automobiles that could be repaired more cheaply.

What would you think about the proposition of such insurance with respect to property damage being purchased by the manufacturer of the automobile for 1 year and the cost passed on to the purchaser, the insurance being required to be bought from a separate concern than the manufacturer and the rate being established on some manner of scale taking into account the amount of damage or the amount of injury to an automobile when it collides with another or when it strikes a still object at, say, 5 or 10 miles an hour? What would you think of such a game of applying insurance cost to the manufacturer?

MR. MARKUS. Congressman Eckhardt, I would like to think I have thought of most of the subjects that are possible in this area, and we have thought of that one. Frankly, we have taken no formal position. I think we might find that very interesting.

MR. ECKHARDT. At least it would create a monetary incentive, assuming a competitive market as between two different types of cars, one safer and one less safe.

MR. MARKUS. I certainly agree, and it would put the economic burden of repairability where it can be most squarely faced: on the people who produce the vehicle. I certainly agree.

MR. ECKHARDT. Mr. Markus, I must say that I have a lot of doubts about the perfectness of the jury system, but it is very difficult for me to find a better system than a sort of jury common law system to determine the amount of injury to an individual.



At the same time, I think there should be a wide range of compensation, or at least a reasonable range of compensation, that could be taken care of on a no-fault basis in order to get a great number of these cases out of the court process, hopefully, but at the same time not close the gate to a traditional Anglo-Saxon method of determining the rights of individuals under specific circumstances.

Mr. MARKUS. I think I would have to agree with the substance of your remark. One caution that I think we must exercise is: Some of the attempts to say what is an insignificant injury are very arbitrary and very unsatisfactory. So when you talk about doing this in virtually all matters or insignificant matters, or anything of this sort, you have difficulty in drawing a sensible line.

I think Massachusetts has found that. They are excluding what are obviously some serious injury claims and probably permitting some relatively trivial injury claims under their standards. These lines are very hard to draw. We do know, accepting the studies from the Department of Transportation as accurate in this respect, that at present one-half of all of the tort claims are settled for a total of all loss—economic loss and general damages—for \$500 or less.

We do know that the median figure for medical expense from automobile accidents is in the range of about, I think, \$200. So that the Massachusetts plan, which is basically derived around a \$500 threshold, is really describing 80 percent of all injuries.

One has to make a determination as to what you are doing with this, and I think that it is too easy to subjectively arrive at thresholds or standards without comparing them with some objective data and finding out what havoc we are wrecking.

Mr. ECKHARDT. That might not be too bad if it deals with about 80 percent of the cases and about 20 percent of the cases are left to tort determination. Perhaps you need a little bit more sensitive gage.

Mr. MARKUS. I am not objecting necessarily to the 80-percent figure, but I am saying that is certainly a big chunk of the tort system, and it tends to be a sieve with a great number of very bad holes in it.

As a matter of fact, I have had occasion recently to examine some case records and there was a case in the District of Columbia, right here, in which not long ago there was a total amount of medical expense of \$225, and a jury, who were presumably trying to be fair and equitable to both sides found the total damage was \$19,135. So in that particular case that medical expense meant almost nothing in that determination. So I am saying that that type of sieve may not be the best type of sieve.

Mr. ECKHARDT. Perhaps we need one other standard, or perhaps more than one other standard, but it seems to me to be a fairly good rough gage.

Mr. MARKUS. Sometimes rough gages can be rough on the people. That is the trouble. We want to have a more refined gage if we are going to have a gage.

Mr. ECKHARDT. I am suggesting we might refine that gage, and I am in hopes that all witnesses here may help us in making that determination.

Thank you, sir.

Mr. Moss. Mr. Cotter?



Mr. COTTER. Thank you, Mr. Chairman. If I may refer to this chart again, Mr. Markus, under the tort system, I see you have figures there, innocent victims recover 41 cents out of the premium dollar, claimants lawyers, 14 cents, the insurer 45 cents.

What is your definition of insurer in this case?

Mr. MARKUS. I am trying to divide the premium dollar into two pieces. One piece is that which the insurer either keeps for itself for profit or pays out for all of its various operating expenses, which may include investigation expenses, which may include secretarial expenses, which may include underwriting expenses and everything.

The studies have varied as to what part was left to the innocent victim, but it typically ends up with a number somewhere between 42 and 48 cents. So I would answer your question that way.

Now, of course, if you say here that 55 cents is going to the innocent victim and 14 cents of that he is paying to his lawyer, that leaves him 41 cents. If you say some other portion comes out, he is still ending up with between 42 and 48 cents.

Mr. COTTER. Take the innocent victims award there, 41 cents. Where do you have your loss of adjustment expenses; where do you have your plaintiff's lawyer fees?

Mr. MARKUS. The 45 cents would include the loss adjustment expenses. The claimant's lawyer's fees, as I have listed there, are 14 cents; but I recognize there is data that goes as high as 16 cents, and I am willing to accede to that data.

Mr. COTTER. What about plaintiff's lawyer?

Mr. MARKUS. That is what I mean.

Mr. COTTER. How about defense lawyer fees?

Mr. MARKUS. Those would be included in the insurer's expense, to the extent that they are paid. This is why I think it is most remarkable that they are going to only have a 2-cent reduction when they shift to a system which they say doesn't involve any fault determination.

Mr. COTTER. May I ask you where your source is for the amount of 41 cents which goes to the innocent victims, presumably?

Mr. MARKUS. The 45 cents and the 43 cents are respectively taken from the report of the special committee to study and evaluate the Keeton and O'Connell basic protection plan and automobile accident reparations, published and conducted in New York by the American Insurance Association, 1968, exhibit 1, sheet 2.

Mr. COTTER. Your figures for taxes, profit, and so forth, are in the insurer?

Mr. MARKUS. Yes. I am not suggesting that all of that money is profit. Of course, not. There are many expenses involved in there.

Mr. COTTER. I conducted a survey some time ago when I was serving as Insurance Commissioner in the State of Connecticut. Our figures indicated approximately 35 cents went back to the claimant. Attorneys' fees were in the area of approximately 25, and the remainder to makeup 66 was in loss adjustment expenses. We also put loss adjustment expenses in claims and not in the other section, which you have marked "insurer."

Mr. MARKUS. If we assume that data, Congressman Cotter, that only 35 cents goes to the innocent victim, then you are talking about reducing that further, because that 35 cents must be amplified by whatever number you have from the shifting system and then divided into

two pieces, because there is a new group who are not now entitled to compensation and who would then be entitled to compensation.

I submit that when you go through that procedure, you must necessarily radically cut the amount that the innocent victim receives. That is inherent in any of these proposals.

Mr. COTTER. What has always disturbed me is the fact that here you have in automobile insurance what I consider a necessity, and it seems cruel out of every dollar paid only 35 cents of it goes back to the victim, the injured party, in acquisition of costs, and other factors. It certainly doesn't seem right to me.

Mr. MARKUS. What you are saying is that that return which you found to be 35 cents, or the DOT found to be closer to 44 cents, or whatever it is, that is too small a part of the total dollar, because it is not solving another problem, namely, paying for some people that the system is not now designed to pay for.

I might say it doesn't pay for the space program and a lot of other things. The present system is not designed to pay for those who are not legally meritorious, who our society has said are less meritorious than another group.

I think some effort to help that legally unmeritorious group is worth considering, but I hate to see it done at the cost of taking from the meritorious people.

Mr. COTTER. I have nothing further.

Mr. MOSS. Are there any further questions?

If not, I want to express the appreciation of the committee for your appearance here today. I am sorry it took so long to get to you and to conclude.

I point out that we have tried to be diligent. The committee has not broken for any type of refreshment.

Mr. MARKUS. I commend the committee.

Mr. MOSS. The committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 3:35 p.m., the hearing adjourned, to reconvene at 10 a.m., Wednesday, April 28, 1971.)

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